

# **EXHIBIT 2**

55574-017

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

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ANNE BRYANT,

Plaintiff,

# 5192/00

- against -

BROADCAST MUSIC, INC., et al.,

CONFERENCE ORDER

Defendants.

-----x

ANNE BRYANT,

Plaintiff,

# 2821/02

- against -

SUNBOW PRODUCTIONS, INC.,

Defendant.

-----x

Rockland County Courthouse  
One South Main Street  
New City, New York 10956  
January 2, 2003  
9:30 a.m.

B e f o r e:

HONORABLE ANDREW P. O'ROURKE,

Supreme Court Justice.

Appearances:

MONAGHAN, MONAGHAN, et al., ESQS.  
Attorneys for Plaintiff  
25 East Salem Street  
Hackensack, New Jersey 07601  
BY: PATRICK J. MONAGHAN, ESQ.

(Appearances continue)

1

2                   DUANE MORRIS, ESQS.  
3                   Attorneys for Defendant McCall  
4                   380 Lexington Avenue, 32nd Fl.  
5                   New York, New York 10168  
6                   BY: DAVID S. TANNENBAUM, ESQ.  
7                   of counsel.

8

9  
10                  PATTERSON, BELKNAP, et al., ESQS.  
11                  Attorneys for Defendant Sunbow  
12                  1133 Avenue of the Americas  
13                  New York, New York 10036  
14                  BY: STEVEN ZALESIN, ESQ.  
15                  of counsel.

16

17                  10                   Daniela Fahey  
18                  11                   Senior Court Reporter  
19                  o0o

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21                  COURT CLERK: Counsels' appearance.

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23                  MR. MONAGHAN: Good morning, your Honor.

24

25                  Patrick Monaghan for plaintiff in both matters.

26

27                  MR. TANNENBAUM: Good morning, your Honor.

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29                  David Tannenbaum and Adrienne Valencia for the  
30                  defendant Joel McCall on the first matter on the  
31                  calendar.

32

33                  MR. ZALESIN: Steven Zalesin for defendant  
34                  Sunbow Productions in the second matter.

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36                  THE COURT: Second matter, Sunbold?

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38                  MR. ZALESIN: B-o-w, Sunbow.

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40                  THE COURT: They were listed in the first  
41                  matter but weren't served. Is that correct?

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43                  MR. MONAGHAN: They were served, but we

1 Proceedings

2 did not take a default in a timely fashion under  
3 the one-year provision in the CPLR.

4 MR. ZALESIN: We believe we are not  
5 served.

6 THE COURT: One way or another you were  
7 named.

8 MR. ZALESIN: Named but without notice;  
9 without service or without actual notice. We  
10 had no idea that this case existed until several  
11 months after we were served with the complaint  
12 in our case in mid 2002. It was only  
13 essentially by happenstance that we learned  
14 there was a second action pending in this Court  
15 before your Honor in which -- which is, I  
16 gather, on the trial-ready calendar.

1 Proceedings

2 few weeks before. We didn't know there were two  
3 cases. Otherwise we would have most likely made  
4 an application to consolidate the two cases  
5 because its makes sense. It's the same case.

12 THE COURT: I got a cattle prod for a  
13 Christmas present.

14 MR. TANNENBAUM: That would be good. When  
15 you brought the plaintiff in, we didn't get a  
16 counter offer. If you want to use it on the  
17 plaintiff, I'm all for it.

18 THE COURT: How about us having a short  
19 chat? I'm going to consolidate this.

20 MR. ZALESIN: If I can be heard briefly on  
21 that subject.

22 THE COURT: Yes.

23 MR. ZALESIN: We certainly understand that  
24 the allegation in the two cases are similar, and  
25 as we understand it, defendant Sunbow is a

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Proceedings

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corporation that was controlled by Mr.

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Tannenbaum's client. Mr. McCall was a principal at some point in time. He isn't at this point in time but was at some time in the past, so there's certainly some substantial overlap between the two cases. We acknowledge that.

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The problem that we have, your Honor, is that we are in vastly different procedural postures as between the two cases. We are literally just getting started. We're going to serve a motion to dismiss the complaint that is due today on statute of limitation grounds and some pleading issues, but we have had no discovery really, not even time for adequate factual investigation, and, Judge, it's a little bit like being asked to take a final exam before you've taken the class. We understand we would expect the Court would grant us some time for discovery, but in cases like these, where there's been full discovery in the other case, and the first case is ready for trial, and the second case issue isn't even joined -- we haven't even answered the complaint yet. It would be either highly prejudicial to us to

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Proceedings

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consolidate, or I guess the only alternative is  
3 to allow for a substantial delay of the first  
4 case in order for us to get up to speed and take  
5 discovery and make whatever motions.

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THE COURT: Let me ask you this. Have you  
seen the discovery that's already been had?

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MR. ZALESIN: No. We know nothing about  
this case.

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MR. TANNENBAUM: I know you have  
deposition transcripts, and there were only two  
depositions taken, and I know you have those  
because I spoke to somebody from your office.

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THE COURT: Let me say it seems to me that  
if I gave you a discovery schedule today, that  
you should certainly be able to be through with  
discovery in 90 days.

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MR. ZALESIN: I don't know whether that's  
reasonable or not, your Honor.

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THE COURT: I've been accused of being  
unreasonable before.

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MR. ZALESIN: I would expect that the  
plaintiff can supply us with whatever discovery  
we require within a reasonable period of time.  
That's within their control. My concern,

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however, is that there are other parties that have important factual knowledge.

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The case, as I understand it, that Mr.

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Monaghan originally brought and is named as BMI, Broadcast Music, Inc., it's a performing rights society which basically controls the copyright warranties for copyright musical works. We absolutely need discovery from BMI in order to litigate this case because the allegation is that my client, in some conspiracy along with Mr. Tannenbaum's client, and others who aren't before you, arranged to have the plaintiff's copyrighted musical compositions reregistered with BMI so monies that would be paid to the plaintiff would be paid to others.

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THE COURT: I'm sort of aware of this

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because of the first case.

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MR. ZALESIN: Bear with me because again

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we haven't participated in any of the Court hearings or conferences, and I don't know how much your Honor is familiar with or not, but we absolutely need discovery from BMI in order to litigate this case. We don't know in any of this is true. We haven't seen a shred of

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## Proceedings

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evidence that any of this is true or certainly  
3 that my client Sunbow had anything to do with  
4 it, if it did happen, but we absolutely need  
5 discovery from third parties.

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THE COURT: Your request for discovery  
seems to lie its worth here in intention in  
making a motion for summary judgment.

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MR. ZALESIN: Your Honor, it would seem to  
me, based on the amount of information available  
to us at the moment, that this should be a  
summary judgment case. I don't know what's  
happened in this case, but we have seen no  
evidence, not a shred of documentary evidence,  
that anything that's alleged in the complaint  
ever occurred, and it would seem to me that in a  
case that's trial ready, there ought to be some  
evidence. Otherwise it ought to be dismissed on  
summary judgment.

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I don't know what the record looks like in  
the first case. We certainly would intend to  
develop a factual record, and if it supports it,  
make a summary judgment motion, and we would, of  
course, request the opportunity to proceed on a  
normal procedural track, not in any way impeded

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## Proceedings

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or prejudiced by the fact that there's another  
3 case, which I understand is years ahead of us on  
4 the calendar, and your Honor would like to move  
5 forward to trial, but we are, like any other  
6 litigant, entitled to our full rights as a  
7 defendant and would like to pursue them.

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THE COURT: Okay. This is what we're  
9 going to do. Number one is the plaintiff will  
10 withdraw the note of issue subject to  
11 stipulation putting it back on, and I will tell  
12 you now that if you don't sign the stipulation,  
13 I'll just deliver it back on, so let's do it the  
14 easy way.

15

Secondly, in the second action I'll give  
16 you the normal time I have give for discovery,  
17 which is 40 days for discovery of documents,  
18 which would take you to about February 12th.  
19 Examination before trial a month after that.  
20 I'll make it March 19th. EBTs that are  
21 scheduled will be held on March 19th, and --  
22 where is the plaintiff's office?

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MR. MONAGHAN: We have one in midtown. We  
24 can take it at their offices if they like.

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THE COURT: You'll either agree to

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2 someplace or take it across the street at  
3 Rockland & Orange.

4 MR. MONAGHAN: That's not a problem, your  
5 Honor.

11 And then I'll give you a return date back  
12 here.

14 MR. MONAGHAN: Your Honor, if I may, is  
15 that party discovery? Because we have these  
16 third parties we have to subpoena and work out  
17 schedules with them.

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## Proceedings

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you, but on the other hand I've consolidated the action. I think it is in judicial economy not to try the same facts twice.

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Okay. So that's it. Meantime I'm going to order the plaintiff to make available, if due the defendant Sunbow, all of the outstanding discovery that has been had in this case up until now. You may certainly charge for copies, as required or as allowed, but that should be done within the next 10 days I would say.

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MR. MONAGHAN: That's fine, your Honor.

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THE COURT: And you can decide for Sunbow what additional discovery you need, any of the parties that are involved in this case, since it's now consolidated.

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Anything else I can do for you all this morning? I've done enough, you think?

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MR. ZALESIN: No. This is reasonable, your Honor. Thank you.

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COURT CLERK: Is this consolidated for purposes of joint discovery or consolidated under one index number, 5092?

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THE COURT: I think it should be consolidated for all purposes, the first one.

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11 MR. MONAGHAN: Very well. Thank you,  
12 Judge.

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14 I do hereby certify that the foregoing is  
15 a true and accurate transcript of the within  
16 proceedings.

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Daniela Fahey  
Daniela Fahey

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# EXHIBIT 3

Page 1

1 SUPREME COURT : STATE OF NEW YORK  
2 COUNTY OF ROCKLAND : CIVIL TERM

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ANNE BRYANT,

Index No.  
5192/2000

Plaintiff,

4 -against-

5 BROADCAST MUSIC, INC., (a/k/a "BMI"),  
6 CLIFFORD A. "FORD" KINDER, KINDER & CO.,  
7 LTD., VADIVOX, LTD., JULES M. "JOE"  
BACAL, GRIFFIN BACAL, INC., STARWILD  
8 MUSIC BMI, WILDSSTAR MUSIC ASCAP, SUNBOW  
PRODUCTIONS, INC. and JOHN AND JANE DOES

- 10 ,

9 Defendants.

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10 ANNE BRYANT,

Index No.  
2821/2002

11 Plaintiff,

12 -against-

13 SUNBOW PRODUCTIONS, INC.,

14 Defendant.

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15 NON-JURY TRIAL

16 Rockland Supreme Court  
17 One South Main Street  
18 Suite 200  
New City, New York 10956  
July 6, 2004

19

20 B E F O R E:

21 HON. ANDREW P. O'ROURKE  
22 JUSTICE OF THE SUPREME COURT

23

24

25

<p>1 APPEARANCES: 2 FOR THE PLAINTIFF: 3 MONAGHAN, MONAGHAN, LAMB &amp; MARCHISIO, ESQS. 4 150 West 55th Street New York, New York 10019 BY: PATRICK J. MONAGHAN, JR., ESQ. 5 -and- JEFFREY C. PRIMIANO, ESQ.</p> <p>6 7 FOR THE DEFENDANT, BACAL: 8 DUANE MORRIS, LLP. 380 Lexington Avenue New York, New York 10168 BY: DAVID S. TANNENBAUM, ESQ. 9 -and- ADRIENNE L. VALENCIA, ESQ.</p> <p>10 FOR THE DEFENDANT, SUNBOW: 11 PATTISON, BELKNAP, WEBB &amp; TYLER, LLP. 1133 Avenue of the Americas New York, New York 10036-6710 BY: GLORIA C. PHARES, ESQ. 12 -and- LAUREN HAMMER BRESLOW, ESQ.</p> <p>13 FOR THE DEFENDANT, BMI, INC.: 14 JUDITH M. SAFFER, ESQ. BMI, INC. 15 320 West 57th Street New York, New York 10019-3790 Assistant General Counsel</p>	<p>Page 2</p> <p>1 - APPLICATIONS - 2 (Convened: 11:10 a.m.) 3 (Trial convenes on the record, in open court 4 - counsel and parties present) 5 THE COURT: Okay, at the end of this session 6 I would like all the attorneys to -- you've got to 7 keep together. I want to know who you represent. 8 Pass it along, let everybody sign it. It looks 9 like the whole bar association is here. 10 As I said to you, I'm going to take opening 11 statements. 12 MS. SAFFER: Your Honor, if it please the 13 Court, when you asked for appearances, I did not 14 stand because I'm not going to be participating. 15 But, on reflection, I thought you should be aware 16 of the fact my name is Judith Saffer, I'm the 17 attorney for Broadcast Music, Inc., the first 18 listed Defendant. 19 You stayed the case against Broadcast Music 20 and ordered the Plaintiff to begin in arbitration 21 four years ago. An arbitration proceeding has not 22 been commenced, and I am here because I'm 23 obviously concerned about the outcome of the case 24 and, also, because a witness from BMI Broadcast 25 Music, Inc. has been subpoenaed and will be here</p>
<p>1 APPEARANCES: (Continued)</p> <p>2 3 4 ALSO PRESENT: ANNE BRYANT, PLAINTIFF JULES M. "JOE" BACAL, DEFENDANT 5 NEIL RIGBY</p> <p>6 7 8 ROBERT FRITZ SENIOR COURT CLERK</p> <p>9 10 11 12 13 ELIZABETH A. KENT SENIOR COURT REPORTER</p> <p>14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 3</p> <p>1 - APPLICATIONS - 2 to testify. 3 THE COURT: What happened to the 4 arbitration? 5 MS. SAFFER: It was not commenced. 6 MR. MONAGHAN: The arbitration has been on 7 hold pending litigation, your Honor. BMI is the 8 Performing Rights Society, as your Honor knows. 9 THE COURT: Yeah. 10 MR. MONAGHAN: And Miss Bryant is a member 11 of that. You do not have, in arbitration, the 12 same kinds of discovery and the rights that you 13 would have in litigation to get documents and 14 whatever. Our thought was to pursue the -- 15 Your Honor, this is Miss Bryant, the 16 Plaintiff in this case -- 17 MS. BRYANT: How do you do? 18 MR. MONAGHAN: -- and see how the litigation 19 turns out before we pursue it. We couldn't go on 20 both fronts at the same time. It was simply too 21 much. 22 MS. SAFFER: Your Honor, although the 23 proceeding has been stayed we have produced all 24 the records that have been requested by any of the 25 parties in this, and I am finding myself, frankly,</p>

<p style="text-align: right;">Page 6</p> <p>1 - APPLICATIONS -      2 in a slightly difficult position in that the      3 rulings on -- in this matter, of course, will      4 affect BMI greatly, and yet I'm not really a      5 participant because it was stayed and because they      6 didn't commence an arbitration. So --      7 THE COURT: Do you want to be a participant?      8 MS. SAFFER: I would like to be allowed the      9 opportunity, if need be, to ask a question or      10 whatever. But --      11 THE COURT: I think you have to be either in      12 or out.      13 MS. SAFFER: In or out?      14 Well, then, frankly, I'm going to stay out      15 for the following reasons: Since I did not      16 participate up until this point, I didn't take      17 discovery, we were the subject of discovery, my      18 client did give depositions. But we, on the other      19 hand, did not have a role. And I think it might      20 be prejudicial to us to jump in at the very last      21 second. So we will remain on the sidelines and      22 trust in the wisdom of your proceedings.      23 THE COURT: All right. Okay, I heard before      24 that there was some initial motions of some sort      25 that the people wanted to make? Or statements?</p>	<p style="text-align: right;">Page 8</p> <p>1 - APPLICATIONS -      2 to Miss Bryant. That's their case. It's a very      3 simple case. If your Honor will have Miss Bryant      4 identify finally the songs, the musical      5 compositions, that she claims were re-registered      6 at a certain date and how Mr. Bacal benefitted      7 from their re-registration and that somehow she      8 suffered a detriment by that, I'll go through      9 those songs one by one --      10 THE COURT: I thought this was in limine?      11 MR. TANNENBAUM: They've listed 26 witnesses      12 in this case, your Honor, and there appears to be      13 an effort on their part to also put in evidence      14 that money that went to other people or other      15 theories of damages, such as she had to sell her      16 house, she stopped doing business because of this.      17 It is going to take months and months to try the      18 case they want to try.      19 Very simply, what we want to do is limit the      20 case to the case that is in the pleadings, the      21 only cause of action in evidence. If she's got      22 evidence that -- of money that went back because      23 of an alleged re-registration. That is the case.      24 Also, to be fair, in the amended pleading      25 there are some unconnected claims about DVD sales</p>
<p style="text-align: right;">Page 7</p> <p>1 - APPLICATIONS -      2 MR. TANNENBAUM: Yeah, that's correct, your      3 Honor. There are certain motions in limine that      4 we want to make, and I believe --      5 MS. PHARES: As does counsel for Sunbow      6 Productions.      7 MR. TANNENBAUM: -- and I believe Mr.      8 Monaghan has some issues -- I'm David Tannenbaum.      9 I represent Joe Bacal. That is Mr. Bacal over      10 here.      11 If your Honor wants, I'll go first.      12 THE COURT: We usually say ladies first, but      13 I'll let you go first.      14 Go ahead.      15 MR. TANNENBAUM: Thanks.      16 Your Honor, today the Plaintiff has done a      17 masterful job in making the Court believe that      18 this is a complex case. It's not a complex case.      19 It is a very simple case. They have only one      20 cause of action left in the case. Your Honor      21 dismissed everything else. There is a cause of      22 action for unjust enrichment.      23 What their claim is, is that somehow Mr.      24 Bacal received certain payments that he shouldn't      25 have received and those payments should have gone</p>	<p style="text-align: right;">Page 9</p> <p>1 - APPLICATIONS -      2 and CD sales. We'll deal with that separately.      3 But we would like to limit the case to the issues      4 that are pled. Your Honor carved out four days      5 for this trial. I don't see how we will do 26      6 witnesses just on the Plaintiff's case in four      7 days.      8 What I would like to hand up is to simply      9 have the Court exclude certain irrelevant      10 testimony about money that allegedly went other      11 places or other kinds of types of damages that she      12 suffered and just try the case that is pled. And      13 I'm confident that as soon as she identifies the      14 songs, within an hour I'll be able to show your      15 Honor the claims are nonsense. We'll be able to      16 go home and this will end. I cannot continue to      17 have this man suffer these attorney's fees, huge      18 fees on a case that I will be able to show you      19 when she identifies the songs is complete      20 nonsense.      21 THE COURT: Sort of like Name That Tune.      22 MR. TANNENBAUM: No, your Honor, it is      23 really not. We have all the evidence, we just      24 want to be able to show it to you quickly.      25 THE COURT: I don't know that's an official</p>

<p style="text-align: right;">Page 10</p> <p>1 - APPLICATIONS -      2 in limine motion. If you have one I would be glad      3 to look at it.      4 Would the Plaintiff like to address that?      5 MR. MONAGHAN: Sure.      6 That was not an accurate characterization of      7 where we are at in this case. And I'm sure your      8 Honor knows full well having dealt with a slew of      9 motions which articulated not only the points that      10 Mr. Tannenbaum just made, but even others which he      11 made on behalf of Mr. Bacal.      12 The case is not just the eleven odd thousand      13 dollars that Mr. Bacal has said that he received      14 by way of performance royalties through BMI. The      15 record is going to show, the evidence will show      16 that he reaped huge amounts of money from the      17 exploitation of Miss Bryant's music. This was      18 done through licensing agreements which were all      19 over the world, which are still being done. Even      20 new deals are being made as we speak through      21 Sunbow Productions.      22 Now, granted, he is no longer involved, but      23 during the period that he was millions of dollars      24 over the week -- I guess it's the last two      25 weeks -- we've gotten documents showing that Mr.</p>	<p style="text-align: right;">Page 12</p> <p>1 - APPLICATIONS -      2 enrichment. I would assume you agree with that      3 too?      4 MR. MONAGHAN: No, I don't agree with that,      5 your Honor. If we are able to show through the      6 proofs that Mr. Bacal received monies either      7 directly or indirectly through his companies,      8 through the various companies, Sunbow, Wildstar,      9 Starwild, if he received a financial benefit and      10 we can show and I believe we will show that a      11 portion of those license fees represents Miss      12 Bryant's music.      13 THE COURT: All right, I think we are way      14 off here. I'll reserve on your motion.      15 Let's go ahead and -- is there anything      16 else?      17 MS. PHARES: Your Honor, may I please be      18 heard?      19 THE COURT: Yes.      20 MS. PHARES: I'm going to confine myself      21 just to the procedural part of this case that we      22 are now discussing and, in particular, I agree      23 with Mr. Tannenbaum that we are all prepared to go      24 forward with the case that was pled. Part of what      25 Mr. Monaghan has just referred to with all these</p>
<p style="text-align: right;">Page 11</p> <p>1 - APPLICATIONS -      2 Bacal's company, Sunbow, just in a limited period      3 of time, '93 through '98 -- this is the first time      4 we're getting this stuff. Why we are getting it      5 now when we've asked for it for years, over the      6 weekend -- we were inundated with documents --      7 showed that they received over \$23 million over      8 this period of time.      9 So not to spend time on the opening      10 statement now, but Mr. Bacal is being sued because      11 he not only received monies to which he wasn't      12 entitled, okay, he was instrumental through his      13 companies in altering registrations.      14 THE COURT: I take it counsel is saying that      15 unjust enrichment is the last count left, which is      16 my understanding; do you agree to that?      17 MR. MONAGHAN: No, I don't. I think      18 constructive trust is also left in the case.      19 MR. TANNENBAUM: Based on the unjust      20 enrichment?      21 MR. MONAGHAN: Right.      22 Those two things are in the case.      23 THE COURT: The second thing is he says your      24 proof has to be limited to direct dealings by his      25 client that would have caused this unjust</p>	<p style="text-align: right;">Page 13</p> <p>1 - APPLICATIONS -      2 licensing claims are the parts of this case that      3 have never been pled that he first raised in      4 response to our motion for summary judgment last      5 November. Among the motions that we are making      6 this morning and I have available is the one open      7 legal issue which I want to discuss as well as      8 motions in limine with respect to copyright claims      9 that are likely to be raised with respect to      10 wrongfully subpoenaed documents and with respect      11 to documents that are hearsay or otherwise      12 objectionable and on evidentiary grounds.      13 Mr. Monaghan is complaining about late      14 produced documents. These are documents on a      15 claim that has never been pled in this case.      16 They -- most of the documents that were produced      17 to him recently are not documents that were      18 requested. Indeed, in a state of total irony, he      19 has finished his recent letter to the Court saying      20 that he is complaining that there has never been      21 discovery. And, indeed, that is the position that      22 we have been taking for sometime. In fact, I sent      23 you a letter on June 10th asking for your      24 intervention, because on the contractual claim,      25 which is not in the complaint, Mr. Monaghan is</p>

<p style="text-align: right;">Page 14</p> <p>1 - APPLICATIONS -      2 attempting -- and which most of his 26 witnesses      3 relate to, there has been no complaint, no answer,      4 and no discovery. And, whereas, we are all      5 prepared to try the case that has been pled we      6 think that there will be reversible error if the      7 Court goes forward with that part of the case      8 without accommodating the Defendants in this case      9 who are proper complaint.</p> <p>10 Indeed, frankly, I will also ask to reserve      11 any proper opening on this case until the      12 beginning of the Defendant's case because,      13 candidly, I do not know which case Mr. Monaghan is      14 intending to put on.</p> <p>15 THE COURT: Let me see if we can come to      16 that conclusion. Mr. Monaghan, tell me, are you      17 not bound by the four corners of the pleadings?</p> <p>18 MR. MONAGHAN: And your rulings, your Honor.      19 You've addressed these very issues a number of      20 times. They've made this claim that there was      21 never any pleading or claim in any of the      22 pleadings for these royalties from the sales of      23 DVDs and CDs. Your Honor's ruling has already      24 addressed that, addressed the fact that the      25 pleadings did cover that. We are notice pleading</p>	<p style="text-align: right;">Page 16</p> <p>1 - APPLICATIONS -      2 trying to rely upon that.</p> <p>3 I would also like to add that, whereas, I      4 said most were not called for, the rest of them      5 were simply formal production -- formal production      6 of documents that were attached to our motion for      7 summary judgment. In his letter to your Honor he      8 claimed that we had produced 13 documents on      9 July 4th. In fact it was one document of 13      10 pages, which was yet another one of the for      11 work-for-hire agreements which Sunbow continually      12 used. So there has been a lot of stir and drum of      13 the misbehavior of the Defendants.</p> <p>14 But the fact of the matter is we have never      15 had a proper complaint and proper discovery on the      16 part of the case that Mr. Monaghan is intending to      17 produce his 26 witnesses.</p> <p>18 MR. TANNENBAUM: All of this is the reason      19 why it makes sense to try the issue of      20 re-registrations right up front, your Honor. It's      21 the core of her complaint. And we will show you      22 very quickly it is nonsense. All this other stuff      23 about indirectly you've gotten paid, over here      24 indirectly, and somehow owns or controls this      25 company when he wasn't even the controlling -- he</p>
<p style="text-align: right;">Page 15</p> <p>1 - APPLICATIONS -      2 jurisdiction. They have had fair notice of the      3 claims. They know exactly what the case is all      4 about as a result of four or five perhaps even      5 more summary judgment motions. They've buried us      6 with paper. And even as recently as this weekend,      7 July 4th, we are getting a couple of hundred pages      8 of documents in PDF formats, license agreements,      9 that we've asked for.</p> <p>10 If you notice, Miss Phares used most in her      11 statement a moment ago. Most she said were not      12 requested. Well some were and we're still getting      13 production. But we are prepared to try the case      14 as it stands right now with the pleadings and your      15 Honor's ruling.</p> <p>16 THE COURT: Go ahead.</p> <p>17 MS. PHARES: Your Honor, the note of issue      18 in this case was filed last June and discovery      19 closed last June. The first time Mr. Monaghan      20 raised this contractual oral working agreement was      21 in November. There has never been discovery on      22 the contractual issues in this case, and the fact      23 that he happened to have asked for certain      24 documents relating to license agreements were      25 irrelevant to the original case, and he's now</p>	<p style="text-align: right;">Page 17</p> <p>1 - APPLICATIONS -      2 didn't have controlling voter shares in the      3 company. It will all fall like a house of cards      4 one by one and your Honor will no longer continue      5 to believe something happened to this woman. Make      6 her say which compositions, what went wrong.      7 We'll take you through them and we'll see in ten      8 minutes. Otherwise, we will be here for months on      9 indirect and documents. We're getting killed      10 here. That's the case she pled. Let's try that      11 case.</p> <p>12 I agree, the words CDs and DVDs are in the      13 complaint. What they didn't point out are      14 payments for CDs that have nothing to do with      15 payments that come from BMI. They are not public      16 performance royalties. What they've done is mixed      17 in all these theories, royalties here, royalties      18 there, to make your Honor believe that somehow      19 things are being hidden, making a claim some      20 monies are coming.</p> <p>21 Make her try the case on public performance      22 royalties. You'll see it right away, and that's      23 what is in the pleadings. That's what her      24 pleading says. That's what we should try. We      25 have no reason about the other stuff. We should</p>

<p style="text-align: right;">Page 18</p> <p>1 - APPLICATIONS -      2 try the --      3 MS. PHARES: Your Honor, one further thing I      4 wanted to ask or say is that the other real      5 problem that we have in the absence of a complaint      6 is that in the -- in the pleadings that have gone      7 on since November Mr. Monaghan has moved his case      8 backwards and forwards from copyright to contract      9 depending on which court he has been in. We are      10 entitled to know really what the form of his      11 complaint is.      12 The contents of one of our motions in limine      13 is the fact what he is trying to do is to      14 stipulate the jurisdiction of this Court. He      15 cannot do that. He is trying to say that there is      16 an oral working relationship between the parties      17 and at the same time say that the Plaintiff has      18 given exclusive rights of her works to Sunbow.      19 That is an impossibility under the Copyright Act.      20 Either there is a contractual relationship, a      21 written contractual relationship which the      22 Copyright Act would recognize and over which this      23 Court would have jurisdiction, or there is not a      24 written agreement. And if there is not a written      25 agreement then she's the copyright owner and what</p>	<p style="text-align: right;">Page 20</p> <p>1 - APPLICATIONS -      2 is a matter of re-registration?      3 MR. MONAGHAN: No, your Honor, it is much      4 more than that. If I can make my opening?      5 THE COURT: All right, let's go to the      6 opening.      7 MS. PHARES: Your Honor, may I submit the      8 memoranda that were due this morning?      9 THE COURT: Yes, certainly.      10 MS. PHARES: Thank you.      11 MR. MONAGHAN: We have not seen any of this      12 material.      13 MS. PHARES: It is being served as Mr. Fritz      14 asked us to do in court today.      15 MS. SAFFER: Your Honor, if I may, before      16 Mr. Monaghan begins, it is becoming clear to me as      17 I'm just listening to these discussions that the      18 actions of BMI are going to be critical to the      19 outcome of this case. And that, therefore, with      20 your forgiveness or mercy or whatever, I would      21 like to indicate that I believe it would be      22 appropriate that I participate.      23 If BMI's actions are going to be ruled upon      24 and decisions are going to be made it seems to me      25 they should be represented by counsel and I'm</p>
<p style="text-align: right;">Page 19</p> <p>1 - APPLICATIONS -      2 she is really claiming is a copyright claim which      3 is pre-empted. But we are really not in a      4 position to make our defense because we don't      5 really know what today or tomorrow or in the days      6 to come Mr. Monaghan is going to make his case      7 into.      8 THE COURT: Well, why don't we start out do      9 the openings, see if we can shed some light on it.      10 MR. TANNENBAUM: Can I make one more point,      11 your Honor?      12 Your Honor ordered them to go forthwith with      13 arbitration with BMI on February 27th 2001.      14 Happens to be my birthday. Had they done that,      15 had they done that what your Honor ordered them to      16 do, instead of trying to use this case and somehow      17 get discovery for the other case, which is what he      18 just said, had they done that they would have seen      19 from the BMI people at the arbitration how      20 nonsensical these claims of re-registration are.      21 They're going to put Miss Bryant on to testify      22 what the internal BMI document said. Had they      23 done it, Judge, I wouldn't be on -- July 4th      24 wouldn't have been wasted.      25 THE COURT: Mr. Monaghan, do you agree, this</p>	<p style="text-align: right;">Page 21</p> <p>1 - APPLICATIONS -      2 prepared to do that.      3 THE COURT: Well, since the arbitration was      4 never gone forward with, I don't think the      5 Plaintiff can have any disagreement with that.      6 MR. MONAGHAN: I have a huge disagreement      7 with it, your Honor, for this reason:      8 This action does not seek any relief against      9 BMI. It seeks no relief. If they wanted to      10 participate in the action they didn't have to move      11 to stay it and seek arbitration.      12 THE COURT: Why didn't you arbitrate it      13 then?      14 MR. MONAGHAN: Because we were involved in      15 this litigation.      16 MR. TANNENBAUM: Three years?      17 MR. MONAGHAN: The issue with -- the issue      18 with BMI is a very different issue. BMI is      19 theoretically a union or a Performing Rights      20 Society. We are not prepared at this point to lay      21 any great fault at the feet of BMI. We want to      22 see what comes out of this litigation. BMI, we      23 think, didn't follow its own procedures. We think      24 that they re-registered things without the proper      25 documentation. But, at this point, the real</p>

<p style="text-align: right;">Page 22</p> <p>1            - APPLICATIONS -</p> <p>2 culprits, I think, are before this Court. We are 3 not seeking any relief against BMI.</p> <p>4            I'm very surprised that Miss Saffer, with 5 whom I've dealt over the years, is here saying, 6 oh, all of a sudden we want to participate. 7 Procedurally, it is irregular. If they wanted to 8 be in the case, they've known about it, they've 9 monitored the case for four years.</p> <p>10          THE COURT: I find, Mr. Monaghan, the fact 11 that you had the ability to arbitrate this for all 12 this time and never did it I'm going to allow BMI 13 to participate in this action. We'll see what 14 happens.</p> <p>15          MR. MONAGHAN: That's fine.</p> <p>16          THE COURT: Let's get along here. If you 17 can find a chair, sit down.</p> <p>18          MS. SAFFER: Thank you very much.</p> <p>19          THE COURT: All right, let's go to the 20 opening.</p> <p>21          MR. MONAGHAN: Sure, Judge.</p> <p>22          Your Honor, what is your pleasure in terms 23 of time on this?</p> <p>24          THE COURT: Well, generally in non-juries, 25 30 minutes.</p>	<p style="text-align: right;">Page 24</p> <p>1            OPENING - PLAINTIFF/MONAGHAN</p> <p>2 the monies that are attributable to the music 3 composed by Miss Bryant which is in various 4 intellectual properties. Videos, DVDs, CDs, which 5 is a huge market, even now, growing market. You 6 can go to Amazon.com and you will see 7 Transformers, the JEM Show, all of these products 8 are being sold, and they have Miss Bryant's music 9 on it. But Miss Bryant doesn't get a farthing, 10 not a penny, for the use of her music.</p> <p>11          So, let me put the issue right out there. 12 There is no writing in this case where she 13 relinquished her writer's interest. And the 14 record will show that the writers, and Miss Bryant 15 in particular, zealously guard their writer's 16 share of royalties. They don't give that up 17 willy-nilly. It is usually a rare case where a 18 writer will actually forego and give up the 19 writer's share of royalties. It is even 20 considered gauche or not industry practice for the 21 publisher who exploits these musical compositions 22 to seek to get the writer's royalties.</p> <p>23          So this case is actually going to be shown 24 to be consistent with the way the industry 25 practice works.</p>
<p style="text-align: right;">Page 23</p> <p>1            OPENING - PLAINTIFF/MONAGHAN</p> <p>2          MR. MONAGHAN: Good morning, Judge. I'm Pat 3 Monaghan and my associate Jeff Primiano is here on 4 behalf of the Plaintiff, Anne Bryant.</p> <p>5          This is an action for unjust enrichment and 6 constructive trust. There are basically two types 7 of damages involved in the case: One is the 8 performance royalties which is where BMI comes in. 9 BMI is a Performing Rights Society. Miss Bryant, 10 the Plaintiff, is a member of BMI and has been for 11 many years. The one thing about BMI is that 12 according to its own rules and procedures it must 13 pay the writer directly and the publisher. So 14 that it's quite different with respect to other 15 monies that may be realized from the compositions 16 at issue. This is the one instance, public 17 performances, live performances, broadcast 18 performances, where the writer and publisher get 19 their money directly. BMI monitors the 20 performances and pays the writers according to the 21 percentages attributable to each of the 22 participants. So that is one type of damages that 23 we are talking about.</p> <p>24          But the other type of damages that we are 25 talking about, which is way more significant, is</p>	<p style="text-align: right;">Page 25</p> <p>1            OPENING - PLAINTIFF/MONAGHAN</p> <p>2          We have an expert who is going to come in 3 here who is the former president of Capitol 4 Records. Harvard educated. We won't hold that 5 against him. But he will testify as to industry 6 practice about writers and publishers.</p> <p>7          Now, as of 2001 we've had limited 8 information, piecemeal discovery. Those 9 performance royalties, the BMI monies which we say 10 Miss Bryant was shorted on are over \$238,000. 11 Now, how do we do that? How do we calculate that? 12 It actually took Miss Bryant -- she charted this 13 to go back over all the royalty statements. Not 14 only her own royalty statements, but those that 15 Mr. Bacal -- from what we could glean from Mr. 16 Bacal -- Starwild and Wildstar, the two publishing 17 entities, and put that information together. She 18 charted it, and she can show well they got money. 19 When the writer gets money the publisher should 20 get money.</p> <p>21          There is a 200 percent interest in every 22 composition with BMI. 100 percent for the writer, 23 100 percent for the publisher. You will see the 24 BMI catalog which, by the way, BMI was less than 25 what shall I say forthcoming for Miss Bryant to</p>

<p style="text-align: right;">Page 26</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 obtain that catalog which she asked for for years.      3 It took my involvement. So after two years of      4 begging to get a copy of her catalog, only when      5 the lawyers got involved she finally got a      6 catalog, which showed how they were allocating the      7 percentages. That's performance royalties,      8 238,000.</p> <p>9       Now, the other monies we're talking about in      10 the case are monies for the exploitation of the      11 music with other intellectual properties. We are      12 not saying that every dime that Sunbow got or Mr.      13 Bacal got is to be split with Miss Bryant. That      14 would be piggish, and we're not pigs. We are here      15 to get what we think is a fair shake. But some      16 portion, some percentage of that intellectual      17 property is represented by her music. In other      18 words, the Transformers theme, which is even now a      19 ring tone on telephones, that is a very      20 recognizable theme. Your kids may know it, my      21 kids know it, and it is readily identifiable.      22 Some portion of that intellectual property in the      23 Transformers -- and we have the CDs -- is      24 represented by her music for which she is not      25 paid. These ring tones, these other uses of her</p>	<p style="text-align: right;">Page 28</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 herring. Because where the copyright resides has      3 no direct bearing on whether she is entitled to      4 her writer royalties. Writers often turn the      5 copyright over to the publisher or the exploiter,      6 and they say, here, you can go with the copyright      7 but you still have to pay me my writer royalties.      8 Unless she signed off, and there are agreements      9 that can do that, unless she signed off and said      10 I'm giving up my writer's royalties I'm just      11 working for hire. And that is going to be a term      12 you hear, "work-for-hire", which is in the classic      13 sense, the United States Supreme Court has already      14 identified what "work-for-hire" is and what the      15 criteria is. It is nothing new. It is the old      16 classic agency.</p> <p>17     If you are an employee -- let's say, you are      18 an employee of Capitol Records and you write a      19 song while you are working for Capitol Records,      20 and you get a 1099 or a W-2 income -- not 1099.      21 W-2. And you've written that for hire because      22 you -- okay, your employer might own all the      23 rights. That's not the case here. By all the      24 criteria that has been set forth in the case law      25 you will find that Miss Bryant did not write these</p>
<p style="text-align: right;">Page 27</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 music, they all are compensable.      3       We've come up with a formula, a damages      4 formula, because we've had to sort of cobble      5 together information. For example, we only have      6 sales figures, unit sales figures for '99 through      7 2003, okay, so we can only say, well, what we call      8 mechanical royalties, mechanical -- the term      9 "mechanical" is a term that derives from the old      10 Copyright Act, but it basically means any      11 iteration of the music in some form. Used to be      12 in records. Actually it used to mean player piano      13 rolls is where it actually comes from.</p> <p>14     But we are going to urge upon you that      15 mechanicals, and we think we have the authority      16 for that, includes any CDs, DVDs, anything that      17 has their music in it. There is a royalty for the      18 use of such music in that -- in those iterations.      19 There is a statutory royalty rate.</p> <p>20     Now, the Defendants are going to jump up and      21 down and say, oh, my, Monaghan is trying a      22 copyright case again. They tried to take us down      23 to Foley Square with Judge Owen arguing we have a      24 copyright case here. Judge, this is a red      25 herring, and I'll tell you why it is a red</p>	<p style="text-align: right;">Page 29</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 works as works-for-hire. Okay. They were written      3 while she was an outside independent contractor      4 working at various -- in this case most of the      5 compositions were written between 1983 and 1989      6 when she was at a company called Kinder-Bryant,      7 her music jingles.</p> <p>8       So the two types of damages we are talking      9 about here are the performance royalties, over      10 \$238,000.</p> <p>11     And, by the way, the fact that Mr. Bacal      12 only got 11,000 directly, according to that,      13 doesn't mean that his company by using the music,      14 by taking the music from the musical piggy-bank,      15 by going in and saying, oh, here is Anne Bryant's      16 music, let's put together a T.V. production and      17 we'll just use that music, by doing it that way,      18 Judge, they are able to file what are known as      19 Q-Sheets with BMI.</p> <p>20     BMI uses two types of documents to      21 accomplish the registration on its records: One      22 is called a clearance form which is the usual --      23 if the writer writes a song and there is a BMI      24 writer they fill out a document called a clearance      25 form. Identifies the song, BMI assigns it a</p>

<p>1           OPENING - PLAINTIFF/MONAGHAN      2 number, goes in the catalog, and the writer      3 indicates participation in the song.      4           The other way that BMI accomplishes      5 registrations is through the vehicle of a cue      6 sheet. Cue sheets are only used in productions,      7 T.V. productions, for example. There are some of      8 those at issue here. The JEM shows, T.V.      9 productions for Sunbow, Defendant, Sunbow. And,      10 first of all, they have to be accurate in terms --      11 but the producer then files a Q-Sheet with BMI and      12 says here are the participants in the music and      13 these are their contributions, okay?      14           What happened here is that most of the      15 songs, including the Transformers and My Little      16 Pony, but not My Little Pony and Friends, GI Joe,      17 these were not written for T.V. productions      18 originally. They were written as jingles for toys      19 for the usual toy commercial. HASBRO was the      20 ultimate advertising client. HASBRO had these      21 toys. They were all familiar with GI Joe and      22 Transformers, and the others, My Little Pony, and      23 commissioned the agency Griffin-Bacal to do the      24 advertising for it. Griffin-Bacal then goes out      25 and retains a jingle company, in this case Anne</p>	<p>Page 30</p> <p>1           OPENING - PLAINTIFF/MONAGHAN      2 talented composer.      3           The Court may recall from its prior      4 decisions that Mr. Bacal was unable to even      5 explain why he's given any share of the      6 Transformers on BMI's records. That's in the      7 record. That's in your decisions already. He was      8 less than forthcoming. His son -- we will show      9 you the videos. His son, Jay Bacal, is shown as a      10 producer.      11           You are going to hear from Carole Weitzman.      12 She is an employee of Sunbow. She is on there.      13 They are all in these videos, and nobody can      14 explain how this happened. Mr. Bacal's testimony,      15 which we will read into the record if he doesn't      16 repeat it, is I don't know how that happened, I      17 don't know why I got percentages of songs I had      18 nothing to do with. But he did. And it's on      19 BMI's records.      20           So we have from the limited information      21 we've been able to cobble together substantial      22 damages claims in the millions. So that in the      23 absence of any writing where Miss Bryant signed      24 off those writer's royalties remain hers. She is      25 supposed to have received them. And Sunbow is in</p>
<p>1           OPENING - PLAINTIFF/MONAGHAN      2 Bryant.      3           Now, one of the themes that the Defendants      4 has tried to argue, well, Miss Bryant was either a      5 fledgling or not very well known or whatever,      6 somewhere along those lines. But Griffin-Bacal      7 was pretty new itself. It only started in or      8 about the time that Miss Bryant was involved with      9 Kinder-Bryant. And so did Sunbow. Okay. Now,      10 maybe they didn't cross their Ts and dot their Is      11 in terms of they way they wanted to do things, but      12 the idea that Miss Bryant was some sort of a      13 second class citizen in the ad agency or the music      14 business versus this big ad agency is just not      15 going to be -- you know, it is not going to be      16 shown by the evidence in this case. It is quite      17 the contrary.      18           So those are the types of royalties we have.      19 Miss Bryant is a talented      20 composer/musician/lyricist. She has one Clio      21 Awards, won Ad Agency Awards. She was -- I'm not      22 going to go through this now, but she is going to      23 testify to her background, her training, from the      24 time she was a young child. She received musical      25 training. Even Mr. Bacal testified she was a very</p>	<p>Page 31</p> <p>1           OPENING - PLAINTIFF/MONAGHAN      2 the nature of -- we urge Mr. Bacal and Sunbow,      3 because of the unequal bargaining position she      4 can't exploit these compositions, they do. They      5 go out and they take these compositions, they make      6 the license deals, which are you are going to see      7 are huge. They are supposed to pay her. They are      8 supposed to split. All the treatises say that,      9 the experts say that and Miss Bryant says that      10 that was her understanding. You go out, you take      11 my music, you exploit it, you put it in whatever      12 you want to put it in, I don't care, I'm not      13 controlling it, but when you do, 50 cents of every      14 dollar you get is supposed to be paid to me.      15           So again the copyright is going to be the      16 issue of the copyright. Whether we should have      17 been at Foley Square or not is a red herring. We      18 are here on a case that involves the      19 understandings between the parties. The Court has      20 characterized it as a working arrangement. And      21 that was the arrangement and the understanding.      22           And Transformers is one of the major songs      23 here. And the record will show Mr. Bacal      24 approached Kinder-Bryant about that composition.      25 And the rest is history as far as that song is</p>

<p style="text-align: right;">Page 34</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 concerned. It was a huge hit. Still is.      3       Now, Miss Bryant has over the years      4 represented and done work for many well-known ad      5 agencies, not just Griffin-Bacal. Griffin-Bacal      6 is actually a small agency. Worked for Leo      7 Barnett, Great Advertising. She's been involved      8 with commercials and jingles for Kellogg's,      9 Dannon, Budweiser.</p> <p>10      And I also want to tell the Court about the      11 relationship of the Defendant to the companies,      12 okay. Mr. Bacal, who is a major shareholder in      13 Griffin-Bacal, Inc., he also testified he was an      14 owner of Sunbow Productions, the T.V. production      15 company which was an adjunct. Sunbow was the      16 owner of two publishing entities: Wildstar and      17 Starwild. Now, when you see the catalog, Judge,      18 you are going to see those names in there,      19 Starwild and Wildstar. One is an ASCAP publisher,      20 which is Wildstar, and Starwild is the BMI      21 publisher. And you will see they are getting      22 shares of these performance royalties. So the      23 songs at issue in the case -- and I would have to      24 set up the equipment to -- we're not going to      25 burden the Court with listening to a whole video</p>	<p style="text-align: right;">Page 36</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 The JEM opening and closing themes. JEM is also      3 known as Truly Outrageous. The JEM songs, of      4 which there are 154. Visionaries. There is      5 another song. And we've just learned over the      6 weekend that the Defendants have exploited two      7 other compositions we didn't even know about until      8 this most recent production. The Great Space      9 Coaster, which was Sunbow's first T.V. production      10 Miss Bryant wrote music for. So that is pretty      11 much it. And I won't burden the Court with      12 anything further because I think Miss Bryant will      13 cover it.</p> <p>14      We have a case for unjust enrichment.      15 They've reaped huge amounts of money. They have      16 not paid the Plaintiff her share. Mr. Bacal made      17 a whole lot more than \$11,000. He made it through      18 the various licensing deals for which he      19 benefitted. He was able to use Miss Bryant's      20 music by just going in it and using it making      21 deals with other people. You'll see, your Honor,      22 that there are individuals shown that Miss Bryant      23 had no knowledge of, had nothing to do with, and      24 suddenly shown as receiving percentages for songs      25 that she wrote. How did that happen? Mr. Bacal</p>
<p style="text-align: right;">Page 35</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 or watching, but we've tried to mark -- so we're      3 going to show the Court the music that is on these      4 videos and DVDs and other mechanicals is in fact      5 Miss Bryant's music. And I don't even think if      6 there is a serious dispute about that, maybe there      7 are, but I have not really heard one thus far,      8 that she was the composer as she's indicated.      9 With some exceptions.</p> <p>10      Now, one major exception is GI Joe. And I      11 want to point out that in the case of GI Joe,      12 which is also hugely successful, she did not      13 write -- we don't claim that she wrote that music,      14 but in another case that she had in settlement      15 with her former partner Ford Kinder, who is also      16 listed as a witness here, Mr. Kinder turned over      17 his performance rights to GI Joe as part of the --      18 that settlement to Miss Bryant. So she is      19 entitled by virtue of that settlement to      20 Mr. Kinder's performance interest rights and      21 royalties on GI Joe which was listed in her      22 catalog. It was in her BMI catalog pursuant to      23 their understanding.</p> <p>24      Songs in the case are the Transformers. My      25 Little Pony. GI Joe. My Little Pony and Friends.</p>	<p style="text-align: right;">Page 37</p> <p>1       OPENING - PLAINTIFF/MONAGHAN      2 testified that he had to make deals. Miss      3 Weitzman testified that Mr. Bacal made the deals.      4 Mr. Bacal and Mr. Griffin. But also Mr. Bacal.      5 You are going to hear testimony, I think, from the      6 Defendant that he wasn't the deal maker. That is      7 in the affidavits. That's not the case. We'll      8 show the Court that Mr. Bacal also was involved in      9 the business deals. In fact, the Transformers was      10 a case in point where he was the one who actually      11 made that deal.</p> <p>12      So with that, your Honor, I conclude the      13 opening statement.</p> <p>14      THE COURT: All right. We're going to go, I      15 assume, in the order of the caption. For defense      16 statements I'd like to keep it down to ten or 15      17 minutes.</p> <p>18      MS. SAFFER: Well, your Honor, I thought      19 that I will take the full 10, 15 minutes that has      20 been allotted to me.</p> <p>21      As you heard in the beginning, BMI is the      22 first named Defendant, but we were not an active      23 participant because we believed that our dispute,      24 if you will, or issues related to BMI, would be      25 resolved in arbitration. Since that was never</p>

<p style="text-align: right;">Page 38</p> <p>1       <b>OPENING - DEFENDANT BMI/SAFFER</b>      2 commenced and since they seem apparently to be      3 critical to the outcome of this case it seemed      4 appropriate that I join in.      5       I find it also interesting that everybody      6 has worked very hard on all sides in preparation      7 in order to try to clarify matters for your Honor,      8 except perhaps me, because I was just sitting by      9 the -- on the outside watching what was going on.      10 However, I probably better than all the other      11 attorneys and probably more so than anybody in      12 this court understand the underlying, if you will,      13 difficulties since I have been an attorney in the      14 copyright field for 35 years and have been the      15 Assistant General Counsel at BMI for 18 years.      16      So let me just say that Mr. Monaghan who      17 took a crash course in how performing rights      18 organizations operate got some of it right and      19 some of it wrong. The role of BMI is to represent      20 writers and publishers of music. We operate      21 differently, if you will, than any other aspect of      22 the music industry in that our rules and      23 regulations call for the fact that we will pay      24 writers, the human beings, the people that      25 actually wrote the music, one half of the</p>	<p style="text-align: right;">Page 40</p> <p>1       <b>OPENING - DEFENDANT BMI/SAFFER</b>      2 Anne Bryant wrote it originally, and change it in      3 our records.      4       Now, thinking that we were not a party to      5 the case, I never thought that today or in the      6 next couple of days I would have to prove that.      7 But, in fact, one of the other parties, the      8 attorney representing Mr. Bacal, subpoenaed the      9 senior vice-president at BMI who will come to      10 testify actually as his witness to trace what      11 happened on each and every one of these      12 compositions and whether or not somebody else was      13 credited with her writer's share, whether it be as      14 a song or a cue, which is the word used for music      15 written as background to television shows or for      16 commercial jingles. And I think the records will      17 show that, in fact, BMI never changed their      18 records, whatsoever, and that she was always      19 credited from beginning to end with the music that      20 the parties claimed originally she had written.      21      I think the point was made by the attorney      22 representing Mr. Bacal that this whole proceeding      23 will be simplified if you first get a chance to go      24 through that and determine what happened on those      25 particular songs. Then, flowing out of that maybe</p>
<p style="text-align: right;">Page 39</p> <p>1       <b>OPENING - DEFENDANT BMI/SAFFER</b>      2 royalties we collect, and we will pay the other      3 half of the royalties to the publishers, which in      4 the normal course of events are the copyright      5 owners. We will do that even if there is what is      6 known in the copyright field as a "work made for      7 hire".      8      Under the Copyright Law in a work made for      9 hire, the quote/unquote author is the entity that      10 commissioned the work. We say, we don't care, we      11 want to pay 50 percent to the human being that was      12 actually the creative person, and everybody who      13 joins writers and publishers alike know that's      14 what the rules are in the game.      15      Now, in this particular instance, Anne      16 Bryant received the writer's share no matter from      17 BMI, no matter what the deal may have been when      18 she wrote the works. And the question as far as      19 BMI is concerned is did there come a time when      20 things that were originally attributed to her for      21 her creative content which, by the way, nobody is      22 disputing, she is a very talented, very      23 able-bodied composer, to which everybody in the      24 Court will I'm sure can see, but the question is      25 did we take things that we had written -- that</p>	<p style="text-align: right;">Page 41</p> <p>1       <b>OPENING - DEFENDANT BMI/SAFFER</b>      2 somewhere along the line there were some other      3 ancillary arrangements, which -- I don't know,      4 which would have allowed Miss Bryant or should      5 have allowed Miss Bryant to receive additional      6 funding.      7      But, traditionally, in the music industry, a      8 writer is, if you will, guaranteed royalties for      9 the performance. They are not guaranteed the      10 writer royalties for anything else unless they      11 have contractually negotiated that. And there      12 will be witnesses on behalf of SONY, I believe,      13 and others music industry experts which will talk      14 about the -- what the practices are in that field,      15 and whether or not Miss Bryant should have gotten      16 additional royalties for other things under other      17 circumstances.      18      So at least in terms of the beginning of      19 this case and at least in terms of the role of      20 BMI, we are prepared through a witness called by      21 Bacal to show in fact that Anne Bryant has been      22 credited from the beginning, from the early 1980s      23 to date, with the things that she wrote.      24      Thank you.      25      THE COURT: Okay. All right, let's see, who</p>

<p style="text-align: right;">Page 42</p> <p>1       OPENING - DEFENDANT BMI/SAFFER      2 is next? Kinder and company.      3       MR. MONAGHAN: He settled, Judge.      4       THE COURT: He settled. That's right.      5 Okay.      6       MR. TANNENBAUM: Mr. Bacal.      7       THE COURT: What about Vadivox?      8       MR. MONAGHAN: That was part of the Kinder      9 settlement.      10      THE COURT: Okay. Let's get then to Mr.      11 Bacal.      12      MR. TANNENBAUM: Again, David Tannenbaum,      13 and I'll try to be very brief, your Honor.      14      THE COURT: All right.      15      MR. TANNENBAUM: There is one thing that I      16 think really needs to be said to clear things up      17 because they really have done a great job of      18 mixing a lot of concepts and potential rights      19 together to make it look like something happened      20 here.      21      Let's deal with what BMI does, and Miss      22 Saffer can explain it a lot better than I can, I      23 am glad she is now involved in the case. BMI,      24 what they do is they track public performances of      25 musical compositions. Has to be very clear here,</p>	<p style="text-align: right;">Page 44</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 divvied up to be fair.      3       We will show you in each case in this      4 instance in the 1980s, your Honor, when these      5 songs were written by Miss Bryant, either alone or      6 with Mr. Bacal contributing some lyrics or      7 somebody else, they were registered in a certain      8 way and she was making a lot of money on these      9 writer's shares and performances because these      10 T.V. shows were first run and on the air in      11 television. You had Transformers. Mostly      12 children's cartoons. My Little Pony. JEM. It's      13 in between my age and my kid's age, so I didn't      14 watch those shows, but they were popular in the      15 80s. They are not shown anymore here and that's      16 why her royalties are going down. Nobody changed      17 anything.      18      And we will show you, as we have several      19 times, I don't know why it has not been effective,      20 we've tried it several times, we have the 1099      21 statements from BMI showing exactly what Joe Bacal      22 got paid from 1994 to date for his writer's share      23 of public performance royalties. Again, I'm not      24 talking about CDs, not talking about      25 direct/indirect, that company, his company -- not</p>
<p style="text-align: right;">Page 43</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 Judge, BMI has nothing to do with tallying any      3 kind of sums that are made for selling      4 videocassettes, which is for home use or CDs which      5 is for home use. It is only public performance      6 royalties. Somebody goes on American Idol and      7 sings an Elton John song. Elton John is entitled      8 to some kind of money. There has to be a way of      9 tracking it. He can't keep flipping T.V. stations      10 all the time. Is he BMI. There is a couple of      11 different performance societies. I was hoping I      12 would pick one that was BMI. I just threw that      13 out.      14      What they do is they have people who track      15 performances, whether it is in movie, on a T.V.      16 show or somewhere else, as a public performance so      17 that the writers and the publishers can get paid      18 for somebody using their work. There are two      19 separate shares and, again, that has nothing to do      20 with DVDs, CDs, which I will get to a little bit      21 later unless I forget. There is a writer's share      22 and publisher's share. The writer's share goes to      23 the person who composed the composition. If it is      24 one person, that person gets 100 percent. If it      25 is more than one person, it gets whacked up,</p>	<p style="text-align: right;">Page 45</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 trying to be Jackie Mason here, but I almost did.      3 Just his writer's share of performance royalties.      4 We have the 1099s. Those 1099s show that for that      5 entire period of time he received approximately      6 \$11,000. I didn't want to have to break that down      7 because I didn't want to spend time on this case,      8 but we'll now show you that about \$9,000 of that      9 money has absolutely nothing to do with any song      10 that Miss Bryant worked on. They'll probably      11 agree to that because she didn't work on those      12 songs. So we are talking about a very small,      13 little amount of money. And now we are going to      14 show you with respect to that there were no      15 changes and he was entitled to those shares      16 because when they were registered in the 1980s.      17 They were registered a portion for Miss Bryant and      18 a portion for Mr. Bacal. Sometimes a portion for      19 Mr. Kinder. Depended on who worked on it.      20      And, by the way, Mr. Bacal had nothing to do      21 with those registrations. He and his partner Tom      22 Griffin started an advertising agency and a      23 television production agency. They had no      24 experience, whatsoever, with DDM performance      25 royalties so they hired an administrator, a</p>

<p style="text-align: right;">Page 46</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 gentleman by the name of Mr. Dobishinsky. Mr.      3 Dobishinsky is the one who, working with Anne      4 Bryant's partner Ford Kinder, would actually do      5 the filings. He is the one, we believe, did the      6 filings. Bryant had nothing to do with that. So      7 the original shares -- which, by the way, are not      8 in the case, your Honor, they are trying to get      9 them in the case, they are trying to say now      10 because we tried to show them nothing changed in      11 the 1990s, now they are trying to claim way back      12 in the 1980s when they were originally registered      13 they were registered incorrectly.</p> <p>14       Two problems with that. It's not in the      15 complaint, not in the theory of their case. Not      16 in the complaint. And if the statute of      17 limitations doesn't bar that, I don't know what      18 does.</p> <p>19       We'll also show by 1990 she knew exactly      20 what was in her catalog. That is the writer's      21 share of BMI Productions. The producer gets      22 100 percent of that share -- excuse me, publisher.      23 I'm new to the copyright field too. The      24 publisher's share. 100 percent publisher's share.      25 100 percent writer's share. There is no claim</p>	<p style="text-align: right;">Page 48</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 sold his shares, as all the other shareholders in      3 his company, in Sunbow in 1998 to SONY; that      4 apparently sometime in 1999 SONY entered into a      5 deal with I think called -- Rhino is the name of      6 the company, to sell these things on      7 videocassettes I think somehow this is making      8 money for Joe Bacal or somebody else. The CDs and      9 the videotape claims have absolutely nothing      10 to do with Mr. Bacal. He was gone from the      11 company in 1998. We'll show you the documents      12 that show he is gone from the company in 1998.      13 Nothing in there that says he is entitled to any      14 percentages or anything after 1998. We'll show      15 you his tax returns that showed he didn't get any      16 money for this stuff before 1998 -- after 1998.</p> <p>17       Now, also, I think I'm hearing a claim that      18 while the company was doing business they were      19 making money by selling videotapes and CDs. Of      20 course they were. It is part of their business.      21 It is money that Sunbow owned -- excuse me, Sunbow      22 earned. I'll let Miss Phares deal with the Sunbow      23 issues. But the claim that somehow Mr. Bacal is      24 Sunbow, we will show you in ten minutes it is      25 ridiculous. He never even owned a majority of the</p>
<p style="text-align: right;">Page 47</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 ever here until today as I can tell that Miss      3 Bryant is entitled to any of the publisher's      4 share. That belonged to the publishing company.      5 She wasn't just supposed to get 100 percent of all      6 the money all over the place for giving a song for      7 a T.V. Series. There is a reason they hire      8 somebody to write a song for T.V. Wildstar and      9 Starwild received those shares.</p> <p>10       I've been puzzled by submissions in the      11 affidavit that somehow Joe Bacal made \$238,000,      12 when I've got the 1099s. I've got his tax      13 returns. I've got the internal documents from BMI      14 that show he got \$11,000. I think what I'm      15 hearing now is she is making a claim for the      16 Starwide and Wildstar publishing shares to get up      17 to this 238,000-dollar number. That has nothing      18 to do with anything that's in this case.</p> <p>19       Now, we have this one paragraph that appears      20 in the complaint not connected to anything else,      21 it's in the amended pleading, by the way, that      22 says somehow Joe Bacal is getting money for      23 videotapes and CDs and other things. And in their      24 motion papers they pointed out something that we      25 didn't know because, as a matter of fact, he had</p>	<p style="text-align: right;">Page 49</p> <p>1       OPENING - DEFENDANT BACAL/TANNENBAUM      2 voting share of these two companies. That was      3 owned by Mr. Griffin. We'll bring Mr. Griffin in.      4 We'll show you the documents. There is a wild      5 claim out there somehow he is the alterego. It is      6 not true. We'll show it to your Honor.</p> <p>7       Again, if we can just try the case on the      8 re-registration claim you will see very quickly      9 there is nothing there.</p> <p>10       Thank you, your Honor.</p> <p>11       MS. PHARES: Your Honor, Sunbow is a T.V.      12 production company. And it is important to      13 remember that because there will be attempts to      14 introduce many witnesses from the record business,      15 which is a different kind of a business. T.V.      16 production companies are producing what in      17 copyright world is known as audiovisual work, a      18 T.V. production or movie. And to make sure they      19 get all of the rights they secure from independent      20 contractors, like Miss Bryant, work made for hire      21 agreements. And those kinds of agreements, unlike      22 the one that Mr. Monaghan was talking about      23 earlier that the Supreme Court was addressing,      24 those kinds of agreements have to be in writing.</p> <p>25       The Copyright Act says there are two kinds of ways</p>

<p style="text-align: right;">Page 50</p> <p>1       OPENING - DEFENDANT SUNBOW/PHARES      2 of saying a work made for hire, and if you are      3 dealing with an independent contractor it must be      4 in writing.      5       And there are benefits from having a work      6 made for hire. It means that there can be no      7 termination of the rights in years to come; that      8 the property that's being created will no longer      9 have people coming in later and saying, you know,      10 you have to make new deals with me.      11      So Sunbow, which was a -- maybe a new but      12 certainly a well put-together organization, used      13 work made for hire agreements with all the      14 creative people with whom it operated. And that      15 was the case in this case. And, as I think your      16 Honor knows, it has been Sunbow's contention that      17 indeed Kinder &amp; Bryant signed work made for hire      18 agreements.      19      Now, the way that work made for hire      20 agreements works is that as part of that agreement      21 the performance rights to which we know that BMI      22 is going to pay to Miss Bryant in any case are      23 licensed back to her. Those are the performance      24 rights that are licensed back for her. She is      25 also by contract given certain other rights. She</p>	<p style="text-align: right;">Page 52</p> <p>1       OPENING - DEFENDANT SUNBOW/PHARES      2 to show that there in fact were no claims on the      3 performance rights, in opposition to that Miss      4 Bryant for the first time claimed that she was a      5 copyright owner. She introduced this issue that      6 her jingles in fact or, rather, that the music in      7 the Sunbow productions were derivative works, and      8 other copyright issues. We removed that -- after      9 we had determined or it was clear that the Court      10 thought that it was entitled to go forward on      11 those issues, we removed that case to Federal      12 Court.      13      Now, in Federal Court there was no question      14 that Judge Owen thought those were copyright      15 issues. But at the end of the argument Mr.      16 Monaghan stood up and he said: "I am telling the      17 Court there is no -- despite what we said in our      18 brief, our brief was a little over the top on the      19 issue, and I will be candid with you -- we are not      20 demanding any relief under the Copyright Act." With      21 that, Judge Owen returned the case to State Court.      22      Now, in the most recent affidavits Miss      23 Bryant is again claiming that she is a copyright      24 owner. But, more importantly, she is also now      25 denying that she ever signed an agreement. Now,</p>
<p style="text-align: right;">Page 51</p> <p>1       OPENING - DEFENDANT SUNBOW/PHARES      2 has the right to mechanical royalties if a record      3 is made. She is entitled to certain limited      4 synchronization rights. But the contract doesn't      5 provide for royalties from a home video      6 production, that is a reproduction of the original      7 entire work, not just the music in a home video      8 format.      9       If there had been a disagreement about the      10 home -- the work made for hire agreement that Miss      11 Bryant and her -- rather her company signed, that      12 would be an issue that would properly be before      13 this Court. When this case started there was --      14 there are only claims pled with respect to the      15 performance rights. As far as I can tell, and I      16 don't think Miss Bryant disagrees, there is no      17 suggestion that she has no objection to the      18 publisher having received the publisher's share of      19 the performance rights. That was customary in the      20 business and there is also no issue in this case      21 that Sunbow received any part of the writer's      22 share.      23      So Sunbow, in fact, had a very minor role in      24 this case until last November. And then last      25 November, after we had moved for summary judgment</p>	<p style="text-align: right;">Page 53</p> <p>1       OPENING - DEFENDANT SUNBOW/PHARES      2 what's really interesting about this is that the      3 first time that she claimed to be a copyright      4 owner is in November, after Sunbow had made      5 production of the unsigned JEM Agreement. And      6 Plaintiffs became aware that -- and became aware      7 in our pleadings that the other agreements had      8 been lost in a flood. So now we are in a position      9 where Miss Bryant is claiming that she does not      10 have an agreement. And she says she doesn't have      11 an agreement and that she is a copyright owner and      12 that she is making claims to monies as a copyright      13 owner.      14      Now, if that is the case, this Court does      15 not have jurisdiction. If she agrees that she      16 signed an agreement, even if it is lost, and we      17 think that she did sign an agreement, then we are      18 properly in this Court. But, if not, her claims      19 arise under the Copyright Act. The derivative      20 work claims, the ownership claims, all require      21 construction of the Copyright Act, and the cases      22 are clear that you may not use another label. If      23 you call it unjust enrichment, if it is still a      24 copyright claim, then it is pre-empted and there      25 is no jurisdiction in this Court.</p>

<p style="text-align: right;">Page 54</p> <p>1       OPENING - DEFENDANT SUNBOW/PHARES      2       And I hear Mr. Monaghan saying in his      3       opening statement we'll at least wait to see if      4       his client confirms him that there is no written      5       agreement in this case. If that is the case, then      6       on the issues that were pled in November, long      7       after the close of discovery and after they      8       discovered we did not have copies, signed copies      9       of the agreements, then those cases -- those      10      issues are completely pre-empted.</p> <p>11      Your Honor, Mr. Tannenbaum and I have tried      12     to prepare, if it would help you, a chart which      13     maps out the claims made that were pled originally      14     in this case, and also the claims that were not      15     pled, which I would be happy to offer up to you.</p> <p>16      I think we still all remain prepared and      17     believe that the Court has jurisdiction on the      18     performance rights issues. But if the evidence      19     develops as it sounds like it is going to be then      20     I respectfully submit that your Honor does not      21     have jurisdiction over these claims with respect      22     to what effectively are Miss Bryant's claims to be      23     an equal co-owner with Sunbow in these -- in this      24     music.</p> <p>25      THE COURT: Has Plaintiff received a copy of</p>	<p style="text-align: right;">Page 55</p> <p>1       CAROL ANNE BRYANT - DIRECT/MONAGHAN      2       COURT OFFICER: Give your name and address      3       to the court reporter and spell your name.      4       THE WITNESS: Carol Anne Bryant. C-A-R-O-L.      5       A-N-N-E. B-R-Y-A-N-T.      6       I live at 21 Collaberg Road, in Stony Point,      7       New York 10980 -- 10980.</p> <p>8      CAROL ANNE BRYANT,      9       the Plaintiff, having been first      10      duly sworn by the Court, was      11      examined and testified as follows:      12      MR. MONAGHAN: Thank you, Judge.</p> <p>13      DIRECT EXAMINATION      14      BY MR. MONAGHAN:</p> <p>15      Q. Miss Bryant, I saw you brought a pad up      16     there, and I'm sure that counsel would like to know      17     what that is and why you brought it up to the stand.</p> <p>18      A. It's a pacifier. I feel nervous. When I      19     feel nervous I like to scribble.</p> <p>20      Q. Is that a doodle pad?</p> <p>21      A. Doodle pad. I was just playing around with      22     it.</p> <p>23      MR. MONAGHAN: We have no objection to them      24     looking at it during the course of the case. Miss      25     Bryant indicates she likes to doodle.</p>
<p style="text-align: right;">Page 55</p> <p>1       OPENING - DEFENDANT SUNBOW/PHARES      2     that?</p> <p>3       MS. PHARES: I'm offering it as we speak.</p> <p>4       MR. MONAGHAN: Thank you very much.</p> <p>5       THE COURT: All right. Thank you.</p> <p>6       Who else have we got?</p> <p>7       MR. TANNENBAUM: That's it, your Honor.</p> <p>8       MR. MONAGHAN: That is it for openings, your      9     Honor.</p> <p>10      THE COURT: We'll break for lunch now. And      11     I've got a quarter after twelve -- let's go ahead.</p> <p>12     You've got 15 minutes. We'll use it up until      13     12:30.</p> <p>14      Go ahead.</p> <p>15      MR. MONAGHAN: Thank you, Judge. I call the      16     Plaintiff, Anne Bryant.</p> <p>17      COURT OFFICER: Place your left hand on the      18     Bible, raise your right hand, face the Judge.</p> <p>19      THE COURT: Do you solemnly swear the      20     testimony you shall give before this Court shall      21     be the truth, the whole truth and nothing but the      22     truth, so help you God.</p> <p>23      THE WITNESS: I do.</p> <p>24      THE COURT: Please be seated.</p> <p>25      Thank you. You may inquire.</p>	<p style="text-align: right;">Page 57</p> <p>1       CAROL ANNE BRYANT - DIRECT/MONAGHAN      2       A. Helps me think, remember things.</p> <p>3       MR. MONAGHAN: They can look at it, if they      4     wish.</p> <p>5       THE COURT: Let's go on.</p> <p>6       Q. Miss Bryant, you are the Plaintiff in this      7     action, are you not?</p> <p>8       A. Yes.</p> <p>9       Q. Your complaints in this case concern certain      10      musical compositions, do they not?</p> <p>11       A. Yes.</p> <p>12       Q. Can you briefly identify them? And we'll      13      come back to them, but just for a starting point.</p> <p>14       A. The Transformers. These are themes which      15      also is called Robots in Disguise. My Little Pony and      16      Friends. My Little Pony. GI Joe. The Real American      17      Hero. JEM, also called Truly Outrageous. There are      18      several others.</p> <p>19       Q. Visionaries?</p> <p>20       A. Visionaries.</p> <p>21       Q. How about Robotics?</p> <p>22       A. Robotics. Humanoids. Big Foot. I just      23      learned about that. And The Great Space Coaster. I      24      think that's all of them.</p> <p>25       Q. And some of these compositions were -- well,</p>

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 let me ask you another way.

3 Can you tell the Court now which of these  
 4 compositions were composed as music for T.V.  
 5 productions and which were composed for some other  
 6 reason?

7 A. Well, the first one was The Great Space  
 8 Coaster in 1978. It was for Sunbow's first show,  
 9 actually. And then JEM, of course, was a television  
 10 show first and later became a jingle attached to the  
 11 show with products that spun out of the show.

12 My Little Pony and Friends.

13 Q. How is that different, if it is, from My  
 14 Little Pony?

15 A. Well, My Little Pony was the first theme.  
 16 And within the My Little Pony and Friends theme that I  
 17 did, we harken back, we do a little tip of the hat  
 18 melodically to My Little Pony, about six bars in the  
 19 middle of the theme.

20 Q. Are there any other of those compositions  
 21 that were for T.V. productions?

22 A. Yes.

23 I forgot something. My Little Pony and  
 24 Friends had another theme called Funny Friends. And it  
 25 always said England on my statements. I think it was

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 an alternate theme for that country.

3 Q. Okay. Now, let's go down the songs just to  
 4 make sure we are clear with the Judge.

5 Transformers: T.V. production or --

6 A. It was a jingle first.

7 Q. Jingle for a toy?

8 A. Yes.

9 Q. My Little Pony. Just, My Little Pony.

10 A. A jingle for a line of toys.

11 Q. What about GI Joe?

12 A. It was a jingle first.

13 Q. Okay. And what was your participation in GI  
 14 Joe?

15 A. Well that was written by Ford Kinder in  
 16 about 1979 when we were both employees at Michelin  
 17 Company. So, subsequent to that, it was a successful  
 18 jingle and then I think it became the T.V. show. And  
 19 at our own company, before we went into business,  
 20 Kinder & Bryant, we worked to create a movie theme for  
 21 that called GI Joe The Movie.

22 Q. So it was first a jingle?

23 A. Yeah.

24 Q. Toy jingle?

25 A. So he wrote it. And we developed it for

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN  
 2 other uses somewhat at Kinder & Bryant, and I did the  
 3 arrangements. These were big orchestra days. I was a  
 4 well-known arranger.

5 Q. Why is that song an issue in this case if he  
 6 wrote it?

7 A. Well, when Ford and I finally figured out  
 8 how to separate Kinder & Bryant a few years ago and we  
 9 came to a settlement and I had received no money from  
 10 my company he said, well, everything that's in your BMI  
 11 catalog, which Sunbow's administrator had put some of  
 12 those things in my catalog without my permission, he  
 13 said, keep them, they are yours. You no longer have to  
 14 split them back with me. We used to split everything  
 15 Ford and I.

16 Q. Okay.

17 A. So then I lost out on that. It was a  
 18 worthless item of settlement.

19 Q. But you are here bringing an action for the  
 20 performance royalties relative to GI Joe; is that  
 21 right?

22 A. Yes.

23 Q. Okay. And that's as a result of your  
 24 settlement with Mr. Kinder?

25 A. Yes.

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1 CAROL ANNE BRYANT - DIRECT/MONAGHAN

2 Q. And you let -- because the GI Joe was in  
 3 your BMI catalog at the time you settled with Kinder?

4 A. Yes.

5 MR. TANNENBAUM: Objection, your Honor. I  
 6 want to move things along, but he is leading the  
 7 witness.

8 THE COURT: Yes, try not to.  
 9 MR. MONAGHAN: All right, Judge.

10 Q. Have you ever been known by any other name?

11 A. Well, I was born Carole Anne MacDougal in  
 12 1950.

13 Q. Okay. How did your name change come about?  
 14 A. My mother surrendered me for adoption when I  
 15 was a year old. I was adopted by Roger and Dorothy  
 16 Bryant on Christmas Eve, 1951. I became Carole Anne  
 17 Bryant, but they call me Anne Bryant.

18 Q. How old are you now?

19 A. I'm 53.

20 Q. Where do you live?

21 A. I live in Stony Point.

22 Q. Okay. And how long have you been here?

23 A. I bought that house in 1987. It was a  
 24 weekend house initially, but I moved there full-time in  
 25 1991.

<p style="text-align: right;">Page 62</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Q. Okay. Where is it in Rockland?      3 A. It's in North Rockland. One of those river      4 towns, you know.      5 Q. What is the name of it?      6 A. Stony Point. I'm sorry.      7 Q. Okay.      8 MS. PHARES: Objection, relevance.      9 MR. MONAGHAN: This is biographical      10 information.      11 THE COURT: It is not relevant, but I guess      12 it's background or something. I'll allow it.      13 Q. Okay. Are you married, ma'am?      14 A. I'm divorced.      15 Q. Okay. And what is your occupation?      16 A. I'm a composer and a producer. And I create      17 music, I arrange it. There are so many parts to that      18 now. I used to write music for an orchestra, now I do      19 it on synthesizers and electronics. And I'm a      20 recording engineer too.      21 Q. Do you sing? Play instruments?      22 A. I sing. I do voice-overs. I play      23 keyboards.      24 Q. What is your current employment?      25 A. My current employment is Square Business</p>	<p style="text-align: right;">Page 64</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 of years you mean?      3 Q. Sure.      4 A. Since I was there?      5 I work a lot for Arm &amp; Hammer. I do their      6 baking soda and their tooth -- toothpaste. And cat      7 litters and whatnot. And I work for Nair and Arid. I      8 do a lot of, you know, name brand jingles. I did the      9 Ultramax series with Jason Giombi. What a cute guy.      10 Q. Giombi?      11 A. He's a football player. I'm only kidding.      12 He's a baseball player.      13 Q. Talking about the New York Yankee?      14 A. Yeah, New York Yankee.      15 Q. Are you associated with any other entities      16 currently at this time?      17 A. Yes. I'm music company for the Joey Company      18 &amp; Advertising Agency, president of that company. And      19 founder is Josephine Cummings. She's on the Queen Mary      20 II right now.      21 MS. PHARES: Objection, your Honor, if Miss      22 Bryant is going to read from her pad.      23 THE WITNESS: I'm not reading. There is      24 nothing here.      25 MS. PHARES: Okay.</p>
<p style="text-align: right;">Page 63</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Music with -- Ltd. Which has been my company since      3 1977. It has always had my personal services, but I      4 have a d/b/a for that called Music &amp; Art. Name of a      5 high school I went to.      6 Q. Where are the offices of Square Business?      7 A. In Garnerville, New York, which is about a      8 mile from my house. It's in the Civil War Union      9 Factory.      10 Q. Who works there besides yourself?      11 A. Just me.      12 Although, lots of artists work there. Kind      13 of a Soho on the Hudson.      14 Q. What do you actually do there?      15 A. I have two recording studios. My favorite      16 studios I've ever had. And, you know, factories are a      17 great place for a recording studio because you can work      18 with power and, you know, space. It is an artist      19 complex.      20 Q. What is the business that is done there?      21 A. I write music for commercials and      22 documentaries and like that.      23 Q. Can you give the Court the names of some      24 clients of Square Business?      25 A. All right. Some recent clients last couple</p>	<p style="text-align: right;">Page 65</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 THE WITNESS: As a matter of fact --      3 THE COURT: The pad will be available for      4 anyone who wants to look at it.      5 THE WITNESS: Here, you can have this. It's      6 doodles.      7 MR. MONAGHAN: If you don't mind, please      8 look up so it doesn't appear as though you are      9 reading.      10 THE WITNESS: Oh, okay.      11 MR. MONAGHAN: That will be better.      12 THE WITNESS: I feel like Bob Dole with his      13 pen, holding onto something.      14 BY MR. MONAGHAN:      15 Q. What do you do for the Joey Company?      16 A. Music director and consultant for Joey's Ad      17 Agency. And we worked together for about 30 years, so      18 our whole careers -- I write an awful lot of music for      19 them too.      20 Q. What are some of the clients of the Joey      21 Company?      22 A. Well, Arm &amp; Hammer is their biggest client.      23 THE COURT: There is a problem with      24 relevancy with this counsel.      25 MR. MONAGHAN: Well, because the Defendants</p>

<p style="text-align: right;">Page 66</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN made an issue and I assume they will in their papers that the issue is about the kind of fees that Miss Bryant could come in. Your Honor may recall that one of the points that was made by Miss Bryant in her affidavits was we took a lower creative fee up front to make sure that we kept our writer royalties. So that --</p> <p>MR. TANNENBAUM: Twenty years ago.</p> <p>MR. MONAGHAN: -- her background -- we can make it more current, but I mean her background in the music business --</p> <p>THE COURT: Apparently there's been an agreement that this lady is a very active musician, et cetera.</p> <p>MS. PHARES: She is, your Honor. There was a point made that she was new in the television production business in the early 80s. I don't think that's what this testimony is directed towards.</p> <p>THE COURT: I just want to keep it moving.</p> <p>MR. MONAGHAN: I'm doing my best, Judge.</p> <p>THE COURT: Personally, I want you to know, Miss Bryant, I'm very interested in this, but we have a record and we don't want to get it any</p>	<p style="text-align: right;">Page 68</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN there. And then I got a Master of Fine Arts at SUNY Purchase Conservatory, Classical Conservatory, in classical composition. And then after that I studied intensive Spanish for a couple of years so that I could write in Spanish -- read and write in Spanish. Then I got a Ph.D. in music in contemporary media. And then my last new study is this new recording thing we're doing called Pro-Tools, the standard of production in the industry. And I work with it, but I want to be an expert, so I've taken two out of three levels for expert training. That's --</p> <p>Q. This is what? Electronic music?</p> <p>A. Yeah, very wonderful.</p> <p>Q. Okay, very quickly --</p> <p>A. Recording production.</p> <p>Q. -- could you describe your formative years growing up, especially as it relates to musical training and experience.</p> <p>MS. PHARES: Objection.</p> <p>THE COURT: Sustained.</p> <p>THE WITNESS: What does sustained mean? It is okay?</p> <p>MR. MONAGHAN: No, sustained means you can't</p>
<p style="text-align: right;">Page 67</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN longer than this.</p> <p>THE WITNESS: It is getting really long.</p> <p>Q. Okay, with that admonition about being brief, let me just ask you to run through your educational background as quickly as you can.</p> <p>A. From the beginning up?</p> <p>Q. Well, skip kindergarten.</p> <p>A. Skip kindergarten, all right.</p> <p>I went to grade school in Brooklyn and Manhattan. I went to the High School of Music &amp; Art. That took me through high school. Went to the Eastman School of Music. First, I went to Berkeley -- I forgot I went to Berkeley -- for an intensive year in Boston. Music. And then I came back to New York. I studied recording engineering for a year. And my mother was very sick and she died. I started school in Eastman School of Music, in Rochester. So I came home. Then I continued at Eastman for five intense summers, although I never pulled that degree together for about 15 years, but I got a Bachelor of Music there.</p> <p>Q. Where is that? Berkeley?</p> <p>A. No, no, Eastman School of Music --</p> <p>Q. I'm sorry.</p> <p>A. -- composition. All classical training</p>	<p style="text-align: right;">Page 69</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN answer it.</p> <p>THE WITNESS: Okay. What's the other one?</p> <p>MR. MONAGHAN: It's overruled.</p> <p>THE WITNESS: Overruled.</p> <p>Okay, sustained.</p> <p>THE COURT: It's really stop and go soon.</p> <p>THE WITNESS: All right.</p> <p>BY MR. MONAGHAN:</p> <p>Q. In the context of the music business with which you've been associated, I'll try and touch upon some of the other companies very quickly, but what is a union shop? What does that mean?</p> <p>A. It means a company that's signatore to union codes and practices, like the Screen Actor's Guild. After which is the American Federation of Television and Radio Artists, and the Union --</p> <p>MS. PHARES: Objection, your Honor.</p> <p>A. -- American Federation --</p> <p>THE COURT: Every time there is an objection just hold for a minute.</p> <p>THE WITNESS: Yeah.</p> <p>MS. PHARES: Objection, relevance. There are no issues in this case regarding any kinds of performance unions.</p>



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1	- APPLICATION -	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	MS. PHARES: I beg your pardon.	2	business and what companies you were associated with
3	MR. MONAGHAN: Your Honor, we've done battle	3	that were involved in the jingle business. So that's
4	on this subject with extensive briefs throughout	4	the subject matter.
5	before both your Honor and before the Federal	5	What was the name of the first entity within
6	Court. We have law of the case that -- we are not	6	which you were involved that was in the jingle
7	here seeking copyright relief. We are not seeking	7	business?
8	to prevent anybody from copying it. We are not	8	A. Comtrek in Chicago. Commercial Musi-Cast
9	seeking --	9	that I worked for.
10	THE COURT: Well, I think the problem goes	10	Q. When was that?
11	like this that as this case goes along or at the	11	A. 1972, I think, or three to 1977.
12	end of your Plaintiff's case you are looking for	12	Q. Okay, the next one?
13	damages which this Court finds are grounded in a	13	A. Michelin & Company.
14	copyright cause of action, a quasi copyright cause	14	Q. Okay. And where is that located?
15	of action, you are not going to get it.	15	A. In New York City.
16	MR. MONAGHAN: Well --	16	Q. What was the nature of the business?
17	THE COURT: You have unjust enrichment which	17	A. Commercial music production.
18	I'm going to listen to, and let's see how it	18	Q. What were you to that company?
19	develops.	19	A. I was music director, vice-president and
20	The request of the Defendant is reserved	20	writer.
21	because I'll tell you the truth this case has been	21	Q. And what Performing Rights Society were you
22	going around and around and around since 2001, and	22	a member of when you were at that company?
23	we've had motions and on top of motions here, and	23	A. BMI. I've always been at BMI since I was
24	I've tried to continually get the perspective of	24	21.
25	the case down so it's manageable. And the -- and	25	Q. Let me show you, please, Exhibit --
	Page 75		Page 77
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	I really don't want a case that is all over the	2	THE COURT: Have these been premarked?
3	field. As far as I'm concerned, now that you have	3	MR. MONAGHAN: No, but we have copies for
4	Miss Bryant on the stand, let's hear what she has	4	them and Defendants have these. This is the
5	to say. Let's get her cross-examined. And then	5	BMI --
6	maybe or maybe not it might be a time to look back	6	THE COURT: Is this in contention, whether
7	again at where we are going here.	7	Miss Bryant is a member of BMI?
8	MS. PHARES: Thank you, your Honor.	8	MS. SAFFER: No, your Honor. There is
9	THE COURT: All right. Miss Bryant, you may	9	not -- there is no issue she is a member of BMI.
10	take the stand. You are still under oath.	10	THE COURT: Is that why you are offering
11	C A R O L      A N N E      B R Y A N T ,	11	this, counsel?
12	the Plaintiff, previously duly sworn	12	MR. MONAGHAN: Well, this is her BMI
13	by the Court, resumed the stand	13	agreement.
14	and testified further as follows:	14	THE COURT: All right.
15	THE WITNESS: I have a pen and reading	15	MR. MONAGHAN: I mean --
16	glasses. Okay? Pen and reading glasses.	16	THE COURT: Let's have it marked as
17	MR. MONAGHAN: Okay.	17	Plaintiff's 1.
18	THE COURT: Let's go.	18	(Plaintiff's Exhibit No. 1, Bryant's BMI
19	DIRECT EXAMINATION	19	agreement, marked for identification)
20	BY MR. MONAGHAN: (Continued)	20	MR. MONAGHAN: If there is no objection,
21	Q. Miss Bryant, when we left off we were -- we	21	we'll ask it be moved into evidence.
22	had gone over your background, although not as	22	MS. SAFFER: No objection.
23	extensively as we hoped we would. But, nonetheless, we	23	MS. PHARES: No objection.
24	were at a point where I was about to ask you about your	24	MR. TANNENBAUM: No objection.
25	experience in the music business in terms of the jingle	25	(Plaintiff's Exhibit No. 1, marked and

Page 78		Page 80	
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	received in evidence)	2	THE WITNESS: Yes, BMI Publishing Company.
3	Q. Miss Bryant, the court officer has shown you	3	But I don't have any titles in it, I don't think.
4	Exhibit 1 in evidence.	4	MS. PHARES: I just think that Miss Bryant
5	A. Yes.	5	is not really competent to testify about --
6	Q. That's your BMI agreement, is it?	6	THE COURT: I think some kind of broad
7	A. Yes.	7	brush. I'll allow it.
8	Q. And when was that agreement signed?	8	THE WITNESS: That is to my understanding.
9	A. I remember it was September 3rd, my	9	MR. MONAGHAN: I asked for her
10	birthday, 1971.	10	understanding.
11	Q. Okay. And you've been a member of BMI since	11	THE COURT: Her understanding may not be
12	then?	12	what is going on.
13	A. Yes.	13	MR. MONAGHAN: They are free to put anyone
14	MS. SAFFER: Asked and answered.	14	they want on the stand.
15	Q. What is your understanding of what BMI is?	15	THE COURT: Okay, now we've gotten her
16	A. BMI is a -- I think they are a non-profit	16	understanding, let's go on.
17	organization, but they have writer members they call	17	Q. All right, now getting back to Michelin.
18	affiliated and publisher affiliated who are	18	Were you ever associated with a company
19	member/publisher affiliated, and they track and collect	19	called Michelin & Company?
20	performances for the writers and publishers, and they	20	A. Yes.
21	pay royalties based on an exotic formula that I don't	21	Q. What period of time?
22	really understand. But appropriate royalties based on	22	A. 1977 to 1981.
23	these performances that the writers have cleared in	23	Q. And during this period of time what, if any,
24	their catalogs and the publishers have cleared in	24	contacts did you have with either Griffin Bacal or Mr.
25	theirs.	25	Bacal or Sunbow? That's the '77 to '81 Michelin
Page 79		Page 81	
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	Q. What is a publisher? What is your	2	Company period.
3	understanding of a publisher?	3	A. Okay, I met Joe Bacal for the second time
4	A. A publisher is an administrator who accounts	4	when he came to Michelin & Company to meet with Spence
5	to its writers for 50 percent of what they	5	Michelin to have a meeting to discuss the music -- our
6	administrate. They do the administrative chores. They	6	music house working for his new company, Griffin Bacal.
7	receive -- except when it comes to BMI, each -- the	7	And I believe Sunbow was talked about that too.
8	writer and the publisher get their own check directly.	8	Q. Where did that meeting take place?
9	The publisher receives money, negotiates licenses and	9	A. At Michelin Company offices, 41 West 56th
10	accounts to their writers.	10	Street.
11	MS. PHARES: Your Honor, I'm going to object	11	Q. Now, which of the compositions at issue in
12	to this because this witness really is not	12	this case have anything to do with Michelin & Company?
13	competent to testify to what a music publisher is.	13	A. Great Space Coaster was their first Sunbow
14	She is talking -- she is guessing about this. And	14	production, and I wrote the music for that.
15	there are other witnesses who can testify to this	15	MR. TANNENBAUM: I object, your Honor. That
16	more appropriately.	16	is not in the complaint. Not in the complaint.
17	THE COURT: Well, as long as she keeps it	17	MR. MONAGHAN: The Great -- this is one of
18	very general. In other words, I would like to	18	the points that was made earlier, your Honor,
19	know whether Miss Bryant is a writer according to	19	about documents that had just been produced over
20	BMI.	20	the weekend, over the last five days showing that
21	THE WITNESS: Yes, I'm an author.	21	The Great Space Coaster --
22	THE COURT: Publisher according to BMI.	22	THE COURT: Counsel, what you said was that
23	THE WITNESS: I own a publishing company as	23	you would limit your proof in this case to
24	well.	24	whatever was in the complaint. Plus, as you said,
25	THE COURT: No, BMI.	25	anything that was in any of the decisions of the

<p style="text-align: right;">Page 82</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN Court.</p> <p>Is this in any of the decisions of the Court or the complaint?</p> <p>MR. MONAGHAN: The Great Space Coaster is not mentioned.</p> <p>THE COURT: Then it is not in. Let's go ahead.</p> <p>MR. MONAGHAN: Okay. And this was -- incidentally, this is just background information --</p> <p>THE COURT: All right.</p> <p>MR. MONAGHAN: -- at this point.</p> <p>BY MR. MONAGHAN:</p> <p>Q. All right. And what other compositions which are at issue in this case?</p> <p>A. GI Joe, the jingle theme. Ford Kinder wrote that. And, My Little Pony -- the original My Little Pony melody.</p> <p>Q. And what was your involvement with My Little Pony?</p> <p>A. Well, with both of those, I may have done the arrangements. I usually did most of the arrangements. I was a well-known arranger, so I did the arrangements in Michelin &amp; Company. It was</p>	<p style="text-align: right;">Page 84</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>MR. TANNENBAUM: She may claim she has some kind of agreement with Mr. Kinder. But, as far as I know, they never notified BMI, whatsoever, that payments for GI Joe are supposed to go to Kinder are supposed to go to her.</p> <p>MS. SAFFER: We have never received any notification of an assignment from Mr. Kinder to Miss Bryant.</p> <p>THE COURT: Okay, this is what the Plaintiff is saying right now. I tend to agree with Plaintiff's counsel that these things should be covered on cross.</p> <p>Go ahead.</p> <p>MR. MONAGHAN: Thank you, Judge.</p> <p>BY MR. MONAGHAN:</p> <p>Q. And the music for My Little Pony, who wrote that?</p> <p>A. Ford Kinder.</p> <p>Q. Okay.</p> <p>MR. TANNENBAUM: Just note my objection, your Honor.</p> <p>THE COURT: All right.</p> <p>MR. MONAGHAN: Incidentally, Judge, I just want to put on the record, I don't know if I did,</p>
<p style="text-align: right;">Page 83</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN orchestra days. Co-produced it with Spence and/or Ford. I don't remember what I did for sure.</p> <p>MR. TANNENBAUM: I object on the ground of relevance. She just testified she didn't write GI Joe.</p> <p>THE COURT: Well, she didn't write this. She said she co-produced it.</p> <p>THE WITNESS: And arranged it.</p> <p>THE COURT: And arranged it.</p> <p>Tell me about arranging; how does this come into this lawsuit?</p> <p>MR. MONAGHAN: Well, GI Joe, as the witness has already testified, she received the rights to GI Joe by virtue of a settlement in this courthouse. The witness already testified, laid a foundation, that she received the performance royalties from GI Joe which are supposed to be in her catalog. That is part of her case. It is in the pleadings. The Defendants know about this. And these are not legitimate objections. They can cover what they want on cross. They keep interrupting the direct. I am not going to be able to go through it.</p> <p>THE COURT: Go ahead.</p>	<p style="text-align: right;">Page 85</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>I think I did an objection to the participation at this late stage of BMI. I don't think it is proper. I think it is procedurally --</p> <p>THE COURT: I think I ruled you had three or four years to take them to arbitration. You didn't do it. They are a named Defendant. They obviously belong in this courtroom.</p> <p>MR. MONAGHAN: I just want to object.</p> <p>THE COURT: Objection is noted.</p> <p>MR. MONAGHAN: Okay. Thank you, Judge.</p> <p>THE COURT: Go ahead.</p> <p>Q. Miss Bryant, just so the Court and the rest of us who don't know much about this business understand, what is your understanding based on your experience of an evolution of a jingle? How does that come about? What is the normal process of a jingle being created for an ad campaign?</p> <p>MS. PHARES: Objection, relevance.</p> <p>THE COURT: I'll allow this.</p> <p>Go ahead.</p> <p>A. Well, we're given a call about writing a jingle from an ad agency. And the script comes over or we go over to meet with the agency and discuss the kind of music that they are looking for, what the audience</p>

<p style="text-align: right;">Page 86</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 is. Generalities really about what they want the music      3 to be. And sometimes they give us a lyric or sometimes      4 they give us a line and we write the lyric. It happens      5 a lot of different ways. Then usually it is a budget      6 given. It is made clear up front that this is a      7 competition. It is often made clear it is a      8 competition. Sometimes it is not. And that several      9 music houses are also going to take a try at writing      10 this until they find the one they like. You know, we      11 have to do a demo. Usually there is a demo fee of      12 about a thousand dollars. And then we go away and do      13 our demos and submit them, and they pick what they like      14 from our music house or another one, possibly.</p> <p>15           Sometimes as many as ten or 15 songs. A      16 little crazy there for a while. A hundred, 200 songs      17 people were choosing from, and that is ridiculous. And      18 then the next stage is yea, we won, hopefully. Then it      19 is time to orchestrate, arrange and book the recording      20 session and give a budget. I always do budgets off the      21 top of my head, because I have a sense, an ability to      22 do that.</p> <p>23           Then we would record the final. I would do      24 the arrangement. Conduct a date. Book the singers, of      25 course, and musicians to do that. And do the final mix</p>	<p style="text-align: right;">Page 88</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 about this. If it's registered in nineteen -- if      3 the jingles were registered in 1980, is there a      4 requirement that it be re-registered?      5           MR. MONAGHAN: Is there? No.      6           THE COURT: Okay, so then --      7           MS. SAFFER: Your Honor, the cause of action      8 has to do with the use of music in what we refer      9 to as cues, background music in television shows,      10 et cetera. We have a different system of      11 registering music for jingles for commercials than      12 we do for the background music in T.V. shows. It      13 may be a similar piece of music, it may be totally      14 different. It is a different possess.      15           THE COURT: Well, maybe I can short-circuit      16 this somewhat, I doubt it, but we now had a short      17 discussion, testimony by the witness about how      18 things normally worked in jingles. Now go on to      19 whatever your next point is, counselor.      20           Did something different happen?      21           MR. MONAGHAN: Well, that's what I asked      22 her.      23           THE COURT: Go to the point where in this      24 complaint or decision of mine are we dealing with      25 jingles?</p>
<p style="text-align: right;">Page 87</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 and mastering and submit the final to the agency. And      3 then we also prepared all the union contracts and      4 payroll and waited to be reimbursed. Also given a fee.      5 That's about right.</p> <p>6           Q. And this is the general practice?</p> <p>7           A. Yeah.</p> <p>8           Q. And compare that to the practice that was      9 utilized in this case with respect to anything you did      10 for Griffin-Bacal?</p> <p>11           A. I think --</p> <p>12           MS. PHARES: Objection.</p> <p>13           MR. TANNENBAUM: I object to the form of the      14 question.</p> <p>15           MS. PHARES: Griffin-Bacal is not a      16 Defendant in this case.</p> <p>17           MR. MONAGHAN: Doesn't have to be. These      18 are the -- these are the jingles that are at issue      19 in the case.</p> <p>20           MR. TANNENBAUM: There's no cause of action      21 for the jingles, your Honor. The jingles -- we      22 are talking about re-registrations. This is what      23 we constantly have to face here.</p> <p>24           THE WITNESS: Same piece of music.</p> <p>25           THE COURT: Let's have a little discussion</p>	<p style="text-align: right;">Page 89</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2           MR. MONAGHAN: Okay, I did. But I'll do it      3 again, if you don't mind, your Honor.</p> <p>4 BY MR. MONAGHAN:</p> <p>5           Q. Which of the compositions at issue in this      6 case are commercial jingles?</p> <p>7           A. The Transformers was originally a jingle.      8 GI Joe and My Little Pony were originally jingles. And      9 Humanoids, Visionaries -- I'm not sure about      10 Visionaries. Robotics was originally a jingle. Only      11 about three or four of them that were original themes      12 that started this --</p> <p>13           THE COURT: Hold on one second.</p> <p>14           MS. PHARES: Your Honor, the complaint in      15 this case has to do with registrations of cues in      16 the 1990s, of the cues that were used in T.V.      17 productions produced by Sunbow. Jingles are not      18 part of the complaint in this case.</p> <p>19           MR. MONAGHAN: Not true. Just flatly not      20 true.</p> <p>21           THE WITNESS: Not true.</p> <p>22           MR. TANNENBAUM: Where is the word "jingle"      23 in the complaint? Can you show us the word      24 "jingle" in the complaint?</p> <p>25           THE COURT: Or in some decision where I</p>

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1        CAROL ANNE BRYANT - DIRECT/MONAGHAN 2        extended your complaint.	1        CAROL ANNE BRYANT - DIRECT/MONAGHAN 2        the complaint at issue.
3        MR. MONAGHAN: Your Honor, could we also 4        perhaps get some guidance from the Court on how 5        many different lawyers are going to jump up and 6        down at what point and interrupt the exam? I 7        mean, perhaps they are going to decide you'll take 8        this objection and then I'll take that objection 9        instead of --	4        MR. MONAGHAN: Excuse me, I'm answering 5        questions from the Court. When I'm done -- 6        THE COURT: Go ahead, counsel.
10      THE COURT: Well, I wish it were that 11     simple. I'm not going to curtail the right of a 12     lawyer to defend their client. If the two of them 13     jump up at the same time, the fastest one up is 14     the first one. Except for the tall guy.	7        MR. MONAGHAN: Throughout the entire course 8        of the litigation, in depositions and answers to 9        interrogatories, that has been the way these songs 10      have been characterized. They were -- and the 11      witness just testified, they were done as jingles 12      for toys with the exception of the three 13      compositions she talked about. She's testified on 14      direct and so far without rebuttal, except from 15      lawyers jumping up and down, that these were done 16      as jingles for toys, for HASBRO Toys, 17      Transformers, GI Joe. And the other toys she 18      talked about, including Paragraph 14, which talks 19      about the music for the client HASBRO which 20      marketed toy products, including Transformers, My 21      Little Pony, JEM and GI Joe.
15      MR. TANNENBAUM: Gloria is smarter than I am 16      so she may have more objections.	16      And that's exactly what they want the Court 17      to believe. They want the Court to believe that 18      these were -- this music was done for T.V. 19      productions, therefore, they could use a cue 20      sheet. That's the essence of the case. And it
17      THE COURT: I want to get through this as 18      reasonably as possible. And I thought we had come 19      to an agreement that anything not in the complaint 20      or not as you would say extended somehow by a 21      decision is not for this Court. And they are 22      complaining now that you are going into jingles 23      and they say that is not in the complaint.	21
24      MR. MONAGHAN: Well, they are wrong.	22
25      THE COURT: Show me.	23
Page 91	Page 93
1        CAROL ANNE BRYANT - DIRECT/MONAGHAN 2        MR. MONAGHAN: The jingles -- in the middle 3        of my direct I have to run through the pleadings?	1        CAROL ANNE BRYANT - DIRECT/MONAGHAN 2        has been in the rulings. I believe you discussed 3        that, your Honor, in prior rulings. We say you 4        can't use a cue sheet if the music was not done 5        for a T.V. production.
4        THE COURT: Objections have to be handled 5        when they are made.	6        MS. SAFFER: I stood up last, but I'm 7        littlest.
6        MR. MONAGHAN: All right, Judge.	8        THE COURT: All right, counsel, I have seen 9        in your complaint that you mentioned GI Joe is 10      mentioned, several of the items that have been 11      classified as jingles are mentioned in there by 12      name, and -- but if Miss Saffer --
7        THE COURT: There is no jury here.	13      MS. SAFFER: Yes.
8        MR. MONAGHAN: No, I understand that.	14      THE COURT: -- has something to add to this, 15      I'm willing to listen.
9        THE COURT: I'm not worried.	16      MS. SAFFER: I'm not going to contest 17      whether or not a particular melody was written for 18      a jingle or a theme or a song. The practice in 19      the industry is depending upon the use of the 20      music no matter what it was originally thought of 21      in the composer's mind. It is registered 22      differently because it receives different kinds of 23      payments. If something is registered as a jingle 24      it is paid when it appears in a commercial on T.V. 25      If it is registered as a cue, that means that it
10      MR. MONAGHAN: I'm not either. But I 11      think -- just think it is unfair to force me to go 12      through the pleadings right now and pick this out 13      in the middle of my direct of this witness. But 14      I'll do that. But I need a minute.	
15      THE COURT: I appreciate that.	
16      MR. MONAGHAN: You also answered 17      interrogatories. And we've also used the word 18      "compositions" throughout the pleadings. And the 19      compositions include the songs and the music we 20      are talking about. Paragraph 9 of the complaint, 21      the verified complaint, which initially had BMI 22      talks about Bryant and Kinder to being in the 23      jingle business dealing with ad agencies such as 24      BMI.	
25      MS. PHARES: The verified complaint is not	

<p style="text-align: right;">Page 94</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN is part of the background music, the theme or background scoring on a television show. And if, for example, it is a song, it's registered as a song and paid that way. If you think, for example, of something in today's world, Friends, the theme of Friends became a popular song. It is registered at BMI as a theme from the T.V. show and it's registered as a song. So that if it's sung by somebody on the radio or in another show somebody sings it, the composer and the publisher can be paid for the use of that song.</p> <p>Frankly, there are different amounts of money that we pay for different kind of uses. A song we view as being more, if I can use the word, "important", I was going to say maybe that's not the right word, is more valuable, it brings in more revenue and, therefore, we pay it more money.</p> <p>So the issue here is Miss Bryant can write a particular melody that can be -- that same melody can be registered at BMI three times, three different ways, if it's going to be used three different ways.</p> <p>THE COURT: All right, hold on a second. You need a lawyer to ask you questions. This is</p>	<p style="text-align: right;">Page 96</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN gentlemen, you know, I realize that you all have to educate me as we are going along, as opposed to a jury, but at least I have the background of having read these. I can't say I know as much about it as you do, I don't, but I do want to let the Plaintiff put in his case, and I don't like an excessive amount of interfering with Plaintiff or anybody putting in their case. So let's try to keep the objections down. At least for the present I'm going to allow now the witness on the stand to -- who has given us the background of how she makes jingles operate, tell us if counsel wants to ask her what any of the named Defendants in here did to her jingles, if anything.</p> <p>MR. MONAGHAN: We'll get to that, your Honor, if I may.</p> <p>MR. TANNENBAUM: Just so we don't interrupt the flow, can we have a continuing objection?</p> <p>THE COURT: You may have a continuing objection throughout the entire trial.</p> <p>MR. TANNENBAUM: Thank you.</p> <p>MS. PHARES: And, your Honor, if to the extent now Miss Bryant is going to say that those songs in the Sunbow works were derivative works,</p>
<p style="text-align: right;">Page 95</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN the last I'm going to take on this issue.</p> <p>MS. PHARES: Your Honor, also, Griffin-Bacal was a company that was in the jingle business, and Miss Bryant worked for Griffin-Bacal through her own company. But Griffin-Bacal is not a Defendant in this case. The only Defendant -- and I don't believe it was ever served, the only Defendant in this case that involves any of the use of Miss Bryant's work is Sunbow. And for Sunbow she was writing music for television series. Jingles are not relevant to what is pled in this complaint and certainly not in the amended complaint against Sunbow.</p> <p>THE COURT: Well, any of the items that are in there that have been designated by name that are jingles, they are in this lawsuit.</p> <p>MR. TANNENBAUM: Except they were registered as jingles in the 1980s.</p> <p>MS. PHARES: In the 1980s.</p> <p>MR. MONAGHAN: We'll change them is the issue.</p> <p>MS. PHARES: There is no change.</p> <p>THE COURT: Hold on. Hold on. If you want to sum up let's just go straight out -- ladies and</p>	<p style="text-align: right;">Page 97</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN we are again right back squarely right in the middle of a copyright case.</p> <p>THE COURT: No, we're not squarely in the middle of it. We are going forward. This trial will end. All wars end, even the Trojan War. This war will end soon.</p> <p>Go ahead.</p> <p>MR. MONAGHAN: Thank you.</p> <p>THE WITNESS: I wish I got to talk.</p> <p>THE COURT: Go ahead. Question.</p> <p>BY MR. MONAGHAN:</p> <p>Q. Okay. Where were you between the years 1983 and 1989 in terms of your employment, Miss Bryant?</p> <p>A. 1983 and -- you left out a couple of years, but, okay.</p> <p>Q. I'm mindful of the Judge's admonition to get to the meat.</p> <p>A. 1981 to 1983 Kinder &amp; Bryant music. 1983 to about 1990 --</p> <p>Q. When you were at Anne Bryant Music, were any of the compositions at issue in this case composed?</p> <p>A. No.</p> <p>Q. And, okay, Kinder-Bryant 1983 to 1989, which of the compositions in this case, if any, were composed</p>

<p style="text-align: right;">Page 98</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN    2 during that period of your involvement?    3           A. All of them were either composed or    4 developed further. My Little Pony was Michelin Company    5 and was developed further at Kinder &amp; Bryant. GI Joe    6 the same. Except for Great Space Coaster.    7           Q. Okay. Now, who is Mr. Kinder?    8           A. Ford Kinder is a composer. Right now he is    9 a medical doctor practicing in Florida.    10          Q. He is one of the witnesses we've listed?    11          A. (Nodding in the affirmative).    12          Q. You have to answer verbally, by the way?    13          A. Yes.    14          And he's a composer, an arranger, a singer,    15 a wonderful singer, a businessman. Grew up in the    16 music business in Atlanta.    17          Q. Okay.    18          A. He was my partner 50/50.    19          Q. Who were some of the clients you had at    20 Kinder-Bryant?    21          A. We worked for a lot of agencies. In the    22 beginning we worked at Saatchi &amp; Saatchi. We did    23 Dunkin' Hines music. And Dannon music. And High Point    24 Coffee. A lot of the major brands. We worked for    25 Ogilvy &amp; Mader. I forgot what we did for them. And we</p>	<p style="text-align: right;">Page 100</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN    2           Q. Tell the Court, please, about the    3 Transformers, that particular song. What is your    4 involvement with that music?    5           A. Well, I composed it in 1983. Late August,    6 as it turned out, in '83.    7           Q. And how did that come about?    8           A. Kinder-Bryant was two months old and Ford    9 very much wanted to work for Joe and HASBRO. Called    10 him a lot. It was summertime, nobody was around, you    11 know. And at the end of August Joe called saying I got    12 a job for you. New toy, great new toy called    13 Transformers. He called Ford, but we had an office    14 that was a huge room, and Ford was at one end and I was    15 at the other end. He was going, Joe Bacal was on the    16 phone, he really wanted to work for Joe, he loved Joe    17 so much. And so he hung up and said, you know, Joe    18 called and explained the job to me, the Transformers    19 and Joe said same deal as Michelin Company. We were a    20 new music house.    21          MR. TANNENBAUM: Objection, your Honor.    22 She's testifying to conversations between Mr.    23 Bacal and Mr. Kinder.    24          THE WITNESS: Ford Kinder told me that.    25          THE COURT: That's why it is hearsay.</p>
<p style="text-align: right;">Page 99</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN    2 worked for Leo Barnett in Chicago. Some of my clients    3 doing Kellogg's and some of their major brands. Also    4 Needer, Harper &amp; Speers in Chicago. Jay Walter Toms.    5           Q. We may have touched upon this, when did you    6 first meet Mr. Bacal?    7           A. I first met Joe Bacal in 1976 when I was    8 doing arrangements for Jinny Reddington, who is a    9 wonderful songwriter. At that time he was still at    10 Bowls. He was a creative director for HASBRO then.    11          Q. What were the circumstances? Why did you    12 have occasion to meet with him?    13          A. He came to the recording session. That's    14 when I met with him. And, after that, I met him again    15 several years later. Maybe 1978. Actually, a couple    16 of years later, at Michelin &amp; Company, when he came to    17 discuss Michelin &amp; Company working for his new ad    18 agency.    19          Q. Do you remember any conversations you had    20 with him that long ago? I know it is difficult.    21          A. Not really. I remember Spence Michelin    22 called me upstairs to his office and said I want you to    23 talk to Joe Bacal. And he vaguely remembered me. And    24 I remember meeting him. And we talked a little bit    25 about music and arrangements and what-not.</p>	<p style="text-align: right;">Page 101</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN    2           Q. What was your understanding of the    3 arrangement at Michelin &amp; Co.?    4           A. I knew the arrangement we worked under it --    5           MR. TANNENBAUM: Objection.    6           MR. MONAGHAN: This is a witness who knows    7 it personally.    8           THE COURT: I said it was all right.    9           MR. MONAGHAN: I'm sorry, Judge, I was used    10 to getting hammered on it.    11          THE COURT: I think you've done all right so    12 far. Go ahead.    13          A. We wrote the music for them and we were    14 given 100 percent of the writer's share of the    15 royalties with Griffin-Bacal, as I am with all my    16 advertising clients. 100 percent of the writer's    17 share.    18          Q. What does that mean? Tell the Judge what    19 that means, the writer's share; what is that?    20          A. There is publishing and writing equal    21 amount, 50/50 or 100 and 100. 100 percent of the    22 publishing, 100 percent of the writing. And the    23 writers keep the writer's share -- or, in the jingle    24 business they do. And the publishers keep the    25 publisher's share. Sometimes when a writer gets lucky</p>

<p style="text-align: right;">Page 102</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 they get a little bit of the publishing too.      3       Q. And what does the publisher do?      4       A. The publisher basically causes a piece of      5 music to be performed. I mean, that's the simplest      6 definition of what -- and they work the song, I guess.      7 That's a publisher. And they also do -- they are      8 responsible for accountings and administration.      9       Q. What involvement does the publisher have,      10 for example, with licensing of the music?      11      A. They issue licenses.      12      Q. Okay. What about monitoring the payments      13 for the licenses?      14      A. They receive the payments for the licenses.      15 But not in the case of BMI. They receive their check,      16 BMI, and the writer receives a separate check.      17      Q. Okay. And what about determining what uses      18 would be made of the music? Who makes that decision as      19 between the writer and the publisher?      20      A. The publisher makes that decision if the      21 publisher is a copyright owner, or the publisher maybe      22 is an agent for a copyright owner. The writer doesn't      23 have any say in that.      24      Q. And under what circumstances would you as a      25 writer have given up your writer's royalties through</p>	<p style="text-align: right;">Page 104</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 ways that a person could lose or have their rights      3 expire other than a written document?      4       MS. SAFFER: Among other things, your Honor,      5 yes.      6       THE COURT: All right, I think that was in a      7 couple of the motions.      8       MS. SAFFER: Yes.      9       THE COURT: All right, let's go ahead.      10      Q. Okay, you have to answer questions.      11      Let's get back to the Transformers. Let's      12 get a timeframe now, please, again.      13      A. 1983, September.      14      Q. 1983?      15      A. I found it the other day. September 1st,      16 1983 was the day we recorded that, National Edison      17 Studios in New York.      18      Q. Recorded Transformers?      19      A. The Transformers jingle theme.      20      Q. Are you talking about a demo? Are you      21 talking about the final version? What are you talking      22 about?      23      A. We did a piano demo first. We always did      24 that with Joe Bacal. And actually he came over to our      25 office and listened to the different songs in person</p>
<p style="text-align: right;">Page 103</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 songs that you composed?      3      A. I never give up my writer's royalties.      4      Q. Can you cite a single instance in your      5 career where you ever gave up your writer's royalties?      6      A. No.      7      Q. Okay. Have you seen any document in this      8 case in all the four years of this litigation where you      9 signed off on your writer's royalties?      10     A. No.      11     MS. SAFFER: Your Honor, I wish to object,      12 unless it is made clear that what the witness is      13 testifying to is her understanding, if you will,      14 of what has transpired, as opposed to a definitive      15 statement that this is in fact what has      16 transpired.      17     In other words, with all due respect to Miss      18 Bryant, she is not an employee of a performing      19 arts organization. She doesn't have an expertise      20 in that area. There will be witnesses who do.      21 There will be other witnesses maybe also brought      22 by the Plaintiff. And I just want the record to      23 indicate that what she is testifying to is her      24 understanding, but is not a fact.      25     THE COURT: What you are saying is there are</p>	<p style="text-align: right;">Page 105</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 which he did sometimes, you know, he came over to us.      3       Q. Let's just stick with the Transformers.      4       A. On that day he did. That was Transformers.      5 I remember he did. And he picked -- I think we did a      6 demo on more than one. But he clearly picked the one I      7 did. It was an unusual jingle.      8       Q. Have you got with you on the stand something      9 that would play the music of the Transformers?      10      A. Yes. I'll take this out. I've got it on my      11 phone. You can get this all around the world.      12      MR. MONAGHAN: We're going to play this      13 again, Judge, but this is just to show you a      14 general idea what the music is like.      15      THE COURT: This also goes to the question      16 that somehow or another the Transformers ended up      17 on cell-phone.      18      MR. MONAGHAN: Correct.      19      THE WITNESS: Yeah, it's everywhere.      20      (Music played)      21      THE WITNESS: The whole song, the bridge and      22 everything.      23      Anyway, it keeps going. Sounds kind of      24 silly.      25      BY MR. MONAGHAN:</p>

		Page 106			Page 108
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN		1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	
2	Q. How did you get that music in your phone?		2	Transformers at that time that you composed the music?	
3	A. I downloaded it onto my phone and I got		3	MR. TANNENBAUM: Objection to the form.	
4	some -- maybe because I bought the Transformers movie,		4	MS. PHARES: Objection.	
5	they were marketing the daylights out of me, and I got		5	MR. TANNENBAUM: Played by whom?	
6	a notification that now you can get free Transformers		6	THE COURT: Sustained.	
7	ring tones from Nokia. Or you can get it from		7	Find a different word.	
8	Mini-Ring Tones. I Googled them and found you can get		8	Q. What was your understanding at the time of	
9	lots of ring tones from the Transformers theme.		9	the composition of that music by you as to its use, its	
10	THE COURT: You have an objection?		10	intended use at that time?	
11	MS. PHARES: Objection, your Honor.		11	A. Well, nothing specific. But, you know, we	
12	Relevance.		12	always had the hope that these things would turn into	
13	And, furthermore, there is no foundation for		13	T.V. shows, but we didn't know that at that point.	
14	Miss Bryant's testimony about ring tones. For all		14	Q. It was a toy jingle?	
15	we know, these ring tones are all unauthorized.		15	A. Yeah, it was a toy jingle first. It had to	
16	Frankly, I don't think any of us knows.		16	be a toy jingle, yeah.	
17	THE COURT: No special reason except she is		17	Q. What did Sunbow have to do with this?	
18	playing it on her phone.		18	A. Nothing, at that point.	
19	MS. PHARES: I understand that, but we are		19	Q. Did the name Sunbow even come up at that	
20	now also moving far away from the area of		20	point?	
21	performance royalties because her ring tone does		21	A. Not in the discussions on the Transformers.	
22	not involve public performance royalties.		22	We knew about Sunbow. We worked for them, you know, in	
23	THE WITNESS: Yes, it does. I get royalties		23	other ways.	
24	for it.		24	Q. The Great Space Coaster?	
25	THE COURT: Just a minute.		25	A. Yeah.	
		Page 107			Page 109
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN		1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	
2	That's really cross-examination.		2	Q. All right. Now, I'm going to show the	
3	THE WITNESS: I get royalties for it.		3	witness --	
4	THE COURT: Go ahead.		4	MR. MONAGHAN: I'm going to ask the reporter	
5	Q. Who composed the music the Court just heard?		5	to mark this as Exhibit 2.	
6	A. I did.		6	THE COURT: State what it is, for the	
7	Q. And is this the music you were talking about		7	record.	
8	a moment ago?		8	MR. MONAGHAN: Yes, your Honor. It is Miss	
9	A. Yes.		9	Bryant's BMI catalog dated April -- I'm sorry,	
10	Q. Is this the music you composed pursuant to		10	March 16th 2000. It is Bate Stamp Numbered 574	
11	the overture from Joe Bacal's agency?		11	through 658.	
12	A. Yes.		12	The Defendants have copies of this --	
13	MR. TANNENBAUM: Objection to the form. Not		13	THE COURT: Just off the record a moment.	
14	Joe Bacal's agency. It was a corporation.		14	(Discussion off the Record)	
15	THE COURT: Sustained.		15	(Resumed on the record, in open court)	
16	MR. TANNENBAUM: Thank you.		16	THE COURT: Let's go.	
17	Q. And were there lyrics to the Transformers?		17	MR. MONAGHAN: All right, thanks.	
18	A. Yes.		18	(Plaintiff's Exhibit No. 2, Ms. Bryant's BMI	
19	Q. Okay. And let me back up a little bit.		19	Catalog dated March 16, 2000, Bate Stamp Numbered	
20	For what purpose was the Transformers music		20	574 through 658, marked for identification)	
21	composed? What commercial purpose?		21	THE COURT: It's been marked for	
22	A. It was to create a theme for this toy,		22	identification.	
23	interesting toy, that was coming out.		23	Any objection to it?	
24	Q. And at that point in time what T.V.		24	MS. PHARES: I have not seen it.	
25	productions were contemplated with respect to the		25	MR. TANNENBAUM: We have not seen it.	

	Page 110		Page 112
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	THE COURT: Show it to counsel.	2	services where you can legally download. Ring
3	THE WITNESS: It says Exhibit 2.	3	Tones is a relatively new use of music. There are
4	MR. TANNENBAUM: We have not gone through	4	companies that are coming to BMI and other
5	every page, your Honor, but with the right to	5	performing rights organizations and getting
6	reserve an objection if something pops up, we do	6	licenses. To that extent, we then pay royalties.
7	believe that was the catalog that was provided to	7	Granted, not great amounts of money, pennies, but
8	BMI.	8	we pay royalties to the people who are listed as
9	THE COURT: And that this catalog would at	9	the writers and publishers of the music in our
10	least theoretically contain all of the musical	10	records.
11	jingle, songs, cues?	11	I have no way of knowing, sitting here,
12	MS. SAFFER: I'm not prepared to say that,	12	whether what Miss Bryant downloaded was from one
13	your Honor. It is a possibility that it does not	13	of those authorized people who got permission or
14	contain the jingles. I don't know, because of the	14	not.
15	date.	15	THE COURT: I understand. I understand.
16	THE COURT: All right, thank you.	16	Okay, let's go forward.
17	It's admitted into evidence.	17	MR. MONAGHAN: Thank you, Judge.
18	MR. MONAGHAN: Thank you, Judge.	18	THE WITNESS: I do that legitimately. I'm a
19	(Plaintiff's Exhibit No. 2, marked and	19	composer.
20	received in evidence)	20	BY MR. MONAGHAN:
21	MR. MONAGHAN: If I may, Judge, we do have	21	Q. Miss Bryant, to finish the thought about the
22	equipment, it is not set up, and I don't want to	22	ring tones on your phone, just tell the Judge how you
23	take the time to do that, but probably tomorrow	23	got that into your telephone.
24	morning where we'll go through the DVDs and the	24	A. I downloaded it from Get It Now on the web
25	CDs and all the music.	25	from a legitimate site that I checked out on Google
	Page 111		Page 113
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	THE COURT: All right, let me get this	2	called Mini-Ring Tones that pays royalties and has
3	straight, it's a good thing we don't have a jury	3	legitimate licenses. I don't pirate anything.
4	here, we have now established that the Plaintiff	4	THE COURT: All right, lets continue.
5	composed, originated some music that was later	5	A. So, you know --
6	called Transformers; is that right?	6	THE COURT: I think the search for
7	MR. MONAGHAN: At the time it was called	7	Transformers is something we'll keep going here
8	Transformers.	8	rather than get into anything else.
9	THE COURT: At the time.	9	MR. MONAGHAN: That's what we are on, your
10	MR. MONAGHAN: At the time, because the	10	Honor, we are on Transformers.
11	toy --	11	Q. Miss Bryant, just --
12	THE COURT: Is that Transformers listed in	12	A. Looking for it.
13	the catalog?	13	Q. -- if I can direct your attention to Page 4.
14	MR. MONAGHAN: Yes, in a variety of ways.	14	A. Page 4. Oh, Transformers. Oh, right, cues.
15	THE COURT: Okay. Then somebody is going --	15	MR. TANNENBAUM: Just so I understand, when
16	I mean, believe me, I know about NAPSTER and those	16	you say Page 4 you mean the number on the top,
17	things. Even I know about it. How does it then	17	right?
18	get to be on the telephone?	18	MR. MONAGHAN: I do.
19	MS. SAFFER: Well --	19	Is that one we furnished you?
20	MR. MONAGHAN: Very good question.	20	MR. TANNENBAUM: No.
21	MS. SAFFER: Okay, your Honor, there are	21	Q. Just a couple of foundational questions.
22	many different ways it gets to be on the	22	This is your BMI catalog?
23	telephone. Some of them authorized, some of them	23	A. Yes, it is. It is old.
24	not. Just like the NAPSTER situation where	24	Q. How did you get it?
25	NAPSTER was not authorized. But there are	25	A. I tried for two years to get this. Then I

<p style="text-align: right;">Page 114</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 called you. And you went to work on my behalf.      3           Q. When you say you tried for two years, what      4 efforts did you make?      5           A. I wrote letters, made phone calls to BMI      6 asking them to investigate missing titles for -- from      7 my catalog and investigate things that seemed to be      8 registered strangely. And I got sent around to several      9 people. And then I wrote several letters with cover      10 copies. I did it, right, you know, to try to determine      11 what was going on.      12          Q. When did you start that process?      13          A. Spring of 1998.      14          Q. And how did you start it? Was it with a      15 call?      16          A. Started with a phone call.      17          Q. Who did you call?      18          A. I called the Writer Relations Department,      19 and then I was told to speak to Greg Bob's office.      20          Q. Writer's Relations Department at BMI?      21          A. Yeah. And I don't know what his title was.      22 So I called this number that they gave me, Greg Bob's      23 office, and I spoke to his assistant Lisa Turner. And      24 Lisa Turner -- when I called, I told her the problem.      25 I said, I don't see GI Joe and I don't see My Little</p>	<p style="text-align: right;">Page 116</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 and the Transformers came up with lots of different      3 people being credited with writing it and me having      4 participation in some and not others. I said, what is      5 going on here?      6          Q. Why didn't you have a catalog before this      7 time, a BMI catalog of your songs?      8          A. Well, I didn't know there was anything      9 wrong. I remember, years ago, I called for a catalog,      10 and I said can I get a copy of my catalog? That is      11 when Ford and I split up. I want to have a copy of my      12 catalog. It was at the house in two days. Somebody      13 ran it for me. I have it somewhere. And everything      14 was fine.      15          Q. So, okay, let's back up a little bit, short      16 cut this a little bit.      17          What information would you -- prior to this      18 exercise in trying to get the catalog, what information      19 would you get from BMI by way of writing statements,      20 that type of thing?      21          A. Well, it used to be that you could see your      22 feature songs, next to it it would say your percentage.      23 A hundred percent.      24          Q. What would say that? What piece of paper?      25          A. The statements.</p>
<p style="text-align: right;">Page 115</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Pony. She said, let me just go into the computer.      3          Q. Stop there.      4          A. Yes.      5          Q. When you say you don't see it, what are you      6 talking about?      7          A. Oh, I found this all on the web quite by      8 accident. I wasn't looking for it.      9          Q. What did you find on the web?      10         A. I typed my name in on the new BMI site to      11 see if I was in the site. My catalog was there.      12         Q. Was there any reason that prompted you to do      13 that?      14         A. Yes. Joey Cummings from the Joey Company      15 asked me to try to find out publisher information for      16 Jim Croce on one of his songs called Feelings. And I      17 did. I thought it was very exciting. Here his whole      18 catalog came up, everything is underlined in blue. I      19 said, wait a minute, I'm in BMI, maybe I'm in there. I      20 typed my name, my catalog came up. It was all      21 wonderful. Until I got to G. I said good, where is GI      22 Joe? I went to down to J. JEM was there. I went to      23 My Little Pony. That was missing. I got down to the      24 Transformers and I clicked on the blue and the      25 underscoring, you know, I wasn't as much a geek then,</p>	<p style="text-align: right;">Page 117</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2          Q. I'll show you some of those later.      3          A. Okay. A number of performances credited to      4 you and then an amount.      5          Q. These are the public performances that      6 generate the money?      7          A. These were on feature songs and jingles had      8 payments, I think it was once a year, in January.      9 Maybe it was twice a year. That kind of fell under      10 that category. And you would see your percentage there      11 too. The Transformers, actually, Robots In Disguise,      12 100 percent. And that was the way it was listed. The      13 way it was born.      14         Q. And so in 1998 you said you commenced the      15 process of trying to get a copy of your catalog as it      16 existed at that time?      17         A. Yeah.      18         Q. And --      19         A. To find out what was going on, you know.      20         Q. Okay. And you contacted -- what did you      21 say? Artist Rights Section?      22         A. The Writer Relations.      23         Q. Writer Relations, okay.      24                   And do you remember the names of anybody      25 else you spoke with?</p>

<p style="text-align: right;">Page 118</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 A. I spoke to Lisa Turner. And she typed my      3 name. She said, well, let me just take a look. She      4 typed my name in the computer and she said, oh, my God,      5 there's a writer's change here. We never see that.      6 And, you don't know about this? And I said, no, I      7 don't know anything about it.</p> <p>8 MS. SAFFER: Excuse me, your Honor.</p> <p>9 Objection.</p> <p>10 MR. TANNENBAUM: Objection with respect to      11 my client. That is hearsay.</p> <p>12 MS. SAFFER: And with respect to my client      13 that is hearsay too.</p> <p>14 MS. PHARES: With respect to all Defendants.</p> <p>15 MR. MONAGHAN: BMI has asked to participate      16 in the case.</p> <p>17 MS. SAFFER: Yes, but she's testifying as to      18 what somebody else was saying.</p> <p>19 MR. MONAGHAN: Somebody at BMI.</p> <p>20 THE WITNESS: I put in a letter, you know,      21 to Charlie Feldman --</p> <p>22 THE COURT: I'll let it in for limited      23 purposes. This isn't a jury trial. I know the      24 difference.</p> <p>25 Go ahead.</p>	<p style="text-align: right;">Page 120</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 somebody who worked at BMI and I said, you know, I have      3 this problem, it is not like BMI to be this way. They      4 said call Mr. Marcilio.</p> <p>5 THE COURT: Do you have an objection?</p> <p>6 MS. SAFFER: Yes, I'm objecting. I really      7 don't understand the relevance. It may be      8 relevant whether or not there was something that      9 was done to change the records or whatever. But      10 every conversation she had with everybody in      11 various implications about BMI changing from being      12 nice to not nice, I really don't think it has      13 anything to do with the issues in the case.</p> <p>14 THE COURT: Well, maybe we could get away      15 from the plot theory and get to what happened      16 next.</p> <p>17 MR. MONAGHAN: Okay, Judge. Thanks.</p> <p>18 A. So Kathy King told me to contact John      19 Marcilio, who I -- I sent him an E-mail, who also      20 worked there. She said he'll -- he can really help you      21 with this and help you get the answers.</p> <p>22 Q. How did you eventually get the catalog?</p> <p>23 A. When you got it for me. That was two years.</p> <p>24 Q. Is this the catalog?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Q. And what other efforts besides telephone      3 calls did you make?</p> <p>4 A. Well, she said you should call -- you need      5 to get in touch with Charles Feldman. Charlie Feldman      6 who I think is in the legal department. Used to be.</p> <p>7 Q. Did you have any contact with him?</p> <p>8 A. I called his office, and his assistant      9 Maggie told me that you need to write a letter to      10 Mr. Feldman and include some copies showing, you know,      11 past registrations of these particular themes that you      12 are concerned about. Ask him what to do. That's how      13 this all began. I was trying to find out what      14 happened.</p> <p>15 Q. Why didn't you get your catalog for two      16 years?</p> <p>17 A. I don't know. Everybody gave me the dodge      18 at BMI. I loved BMI. They were always very helpful.      19 If you had a question they would always answer it. All      20 of a sudden, nobody wanted to know anybody.</p> <p>21 Q. How many letters did you write?</p> <p>22 A. I wrote to Mr. Feldman two or three times.      23 Then I spoke to him and he blew me off. And then I was      24 about to give up on the whole thing. It went over a      25 period of a year. And I went to a party and I met</p>	<p style="text-align: right;">Page 121</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Q. Did BMI -- strike that.      3 What reason did BMI give you for not      4 providing that catalog for that period of time?</p> <p>5 A. I don't think they ever gave me a reason.</p> <p>6 Q. You are the writer, this is your catalog,      7 and it took you two years to get it?</p> <p>8 A. Yeah.</p> <p>9 MS. SAFFER: Objection, your Honor.</p> <p>10 THE COURT: Sustained. I think we got the      11 picture here.</p> <p>12 Q. All right. Let's go, if we can -- I think      13 we started at Page 4 of the catalog?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Exhibit -- what is it? 2?</p> <p>16 THE COURT: You have to say yes or no.</p> <p>17 A. Yes.</p> <p>18 THE WITNESS: I thought he was talking to      19 you.</p> <p>20 Q. Referring to the Transformers. We're going      21 the stick with the Transformers for a little while.</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Does the Transformers composition      24 appear on Page 4?</p> <p>25 A. Well, Autobots Go Into Battle.</p>

<p style="text-align: right;">Page 122</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 MR. MONAGHAN: Judge, we have another copy      3 of this if you want to follow along.      4 MR. TANNENBAUM: We would really like you      5 to, your Honor.      6 MR. MONAGHAN: You would really like.      7 Swell.      8 MR. TANNENBAUM: Okay, I have no objection      9 to this.      10 THE COURT: My grandchildren listen to this.      11 I'm very familiar with it.      12 Go ahead.      13 MR. MONAGHAN: This is Page 4, your Honor.      14 THE COURT: Yes.      15 Q. Autobots Go Into Battle.      16 Incidentally, what is your understanding of      17 the information that's supposed to be provided by the      18 catalog?      19 A. There's a writer and publisher print      20 information.      21 Q. Okay.      22 A. You could see we have writer I.D.s and our      23 affiliations. ASCAP. And our shares.      24 Q. Okay. So we see, for example, that with      25 Autobots Go Into Battle this is a total percentage</p>	<p style="text-align: right;">Page 124</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 A. Right.      3 Q. ASCAP is another Performing Rights Society?      4 A. Yes.      5 Q. Under what circumstances would a writer such      6 as yourself select one or the other of these Performing      7 Rights Societies, ASCAP versus BMI?      8 A. Well, I like BMI better.      9 Q. Well, what is the criteria for deciding?      10 MS. PHARES: The objection was relevance.      11 THE COURT: Well, I'm going to allow it      12 because we're trying to track down the      13 Transformers mystery right now.      14 Go ahead.      15 Q. Can you answer that?      16 A. Why do I like them better?      17 Q. Why did you like BMI better?      18 A. I met Mr. Catron.      19 THE COURT: Okay, not going any further.      20 This is irrelevant.      21 MR. MONAGHAN: It wasn't exactly --      22 A. They were very helpful.      23 MR. MONAGHAN: It wasn't where I was going      24 actually at all.      25 THE COURT: Let's go.</p>
<p style="text-align: right;">Page 123</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 shown there of 200 percent, correct?      3 A. Yes.      4 Q. And the first column where it says,      5 "participant", that is the writer --      6 A. Yes.      7 Q. -- or the publisher, as the case may be?      8 A. The writers seem to be always listed first.      9 Q. Okay, but that column will identify the      10 writer or the publisher with respect to the      11 composition?      12 A. That's right.      13 MR. TANNENBAUM: We'll stipulate that "P"      14 means publishing and "W" means writer, your Honor.      15 THE COURT: All right.      16 Q. And then there is some information under the      17 column, account number; what is that?      18 A. That is my account. 44388.      19 Q. And then there is P/W, and counsel was      20 generous in stipulating to publishers and writers.      21 And then next is a column headed A-F-F-I-L.      22 I assume that is affiliation?      23 A. Yes.      24 Q. That means whether you are a BMI writer or      25 ASCAP?</p>	<p style="text-align: right;">Page 125</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Q. All right, number four.      3 A. I'm sorry?      4 Q. What is that song, Autobots Going Into      5 Battle?      6 A. It is the Transformers melody. It is a cue.      7 Q. The melody we just heard, is it the same      8 melody?      9 A. Yeah.      10 Q. When you say it is a cue, what does that      11 mean in the parlance of the trade?      12 A. It means it is background, it is      13 orchestration, it is behind the scene, of music. It is      14 a cue, a film cue.      15 Q. Does that mean there would not be lyrics?      16 A. No lyric.      17 Q. If it is a cue there is no lyrics?      18 A. No lyric.      19 Q. You have to answer verbally. I see you      20 shaking your head. I want you to acknowledge.      21 Okay. Now, with respect to Autobots Go Into      22 Battle, is there anything wrong with that registration      23 in your understanding as to your participation and the      24 participation of others in that composition?      25 Is there anything wrong with the way it is</p>

<p style="text-align: right;">Page 126</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN registered?</p> <p>A. Well, Ford Kinder shouldn't be there. I wrote this song, and it is 100 percent mine, and the writer's royalty.</p> <p>Q. Now --</p> <p>MR. TANNENBAUM: Objection, your Honor. This is where we are. It's an unjust enrichment claim against Joe Bacal. You have her catalog. 50 percent Anne Bryant, 50 percent Ford Kinder. Nada for Joe Bacal. This is entirely irrelevant. Bacal is not getting anything on this composition. This was my case. She's putting in my case. It is not there. He doesn't get anything. If somehow by some mysterious way somebody schemed to change and give money to Ford Kinder that Kinder is not supposed to get, she sued Kinder, that is Kinder's case. This is where we are. There are 20 straight examples of this and we are going to sit here and do this.</p> <p>THE COURT: Well, unless somebody finds a different way we're going to sit and do this.</p> <p>MR. TANNENBAUM: I object to relevance.</p> <p>THE COURT: As to some of the Defendants in this lawsuit I'm going to allow it in.</p>	<p style="text-align: right;">Page 128</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN anything to do with Sunbow.</p> <p>THE COURT: I assume that everybody at that back table is against everything that they are hearing from the Plaintiff.</p> <p>MS. SAFFER: Except when she says BMI was very cooperative.</p> <p>MR. MONAGHAN: And nice.</p> <p>THE COURT: Let's go ahead.</p> <p>MR. MONAGHAN: All right, Judge.</p> <p>THE COURT: We're going to take a break at 3:15.</p> <p>MR. MONAGHAN: Thank you, Judge.</p> <p>DIRECT EXAMINATION BY</p> <p>MR. MONAGHAN: (Continued)</p> <p>A. Can I finish? You asked me a question.</p> <p>Q. Yes, go ahead.</p> <p>A. The other way -- I mean, the other thing that I see on here is that somebody registered this apparently by cue sheet and it was the administrator for Sunbow. They were -- they have Starwild and Wildstar Music.</p> <p>Another thing I see on here is why is Wildstar Music listed with two BMI writers? Wildstar is an ASCAP company. This is something that doesn't</p>
<p style="text-align: right;">Page 127</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>MR. MONAGHAN: Thank you, your Honor.</p> <p>Q. Do you know, Miss Bryant, how it was that Ford Kinder was credited with 50 percent of the writer's royalties on the music cue that you said you composed?</p> <p>A. It appears to be through a cue sheet because it is not a registration number.</p> <p>MR. TANNENBAUM: Objection.</p> <p>THE WITNESS: They have registration numbers on this, Mr. Tannenbaum.</p> <p>MR. TANNENBAUM: Appears to be through a cue sheet.</p> <p>MR. MONAGHAN: This is cross. If you want to cross-examine her, I'm sure you will get an opportunity.</p> <p>THE COURT: I'm going to allow the witness. On the other hand, my recollection is that the Kinder part of this had been settled, isn't it?</p> <p>MS. PHARES: Correct. Correct.</p> <p>Your Honor, I want to make clear, I'm just not popping up every time Mr. Bacal -- I mean, Mr. Bacal's counsel does. But I don't want that silence to be read as any suggestion that Sunbow believes that this line of questioning is -- has</p>	<p style="text-align: right;">Page 129</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN make sense here about the way it was registered. But I don't register these. The publisher's administrator registers them.</p> <p>Q. Do you know -- can you attribute any significance to the date, October 26th '94?</p> <p>What does that have to do with anything you did with this song?</p> <p>A. I really don't understand. It's a melody that was registered ten years before. Why it had to be re-registered, but --</p> <p>MR. TANNENBAUM: Objection. There is no evidence it was re-registered.</p> <p>THE COURT: Was it registered?</p> <p>THE WITNESS: It was registered again.</p> <p>MR. TANNENBAUM: It wasn't registered again. There is nothing on this page. That's not true.</p> <p>MR. MONAGHAN: This is argument.</p> <p>THE COURT: No, no, we're now working hard on Transformers.</p> <p>MR. MONAGHAN: We are.</p> <p>THE COURT: The witness has testified that she originated this sometime before this --</p> <p>Did it ever appear before in this catalog?</p> <p>THE WITNESS: Absolutely.</p>

<p style="text-align: right;">Page 130</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN MR. MONAGHAN: Again, this catalog was only produced in 2000.</p> <p>THE COURT: No, but was there a prior catalog in which it was in?</p> <p>MR. MONAGHAN: Well, the witness is indicating yes.</p> <p>THE WITNESS: Yes.</p> <p>THE COURT: How is it listed there?</p> <p>You said you used to get them fairly regularly when you asked for them.</p> <p>THE WITNESS: No, I only got them once before.</p> <p>MR. MONAGHAN: No, those are the statements she got.</p> <p>THE WITNESS: It is registered many different ways in different percentages. It is the same song.</p> <p>MS. SAFFER: Your Honor, I object to the term "registered". The piece of paper says "entered". I would appreciate it if she would use the word that is listed on the actual piece of paper. Her counsel can ask her if she knows what "entered" means. But let's say it like it is on the document.</p>	<p style="text-align: right;">Page 132</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN Q. Okay. How do you know of this term -- let me back up a little bit.</p> <p>In your understanding, because I'm sure Miss Saffer will correct me if I'm wrong, I just have a feeling, how are songs registered with BMI? How do they get any of this information that eventually finds its way into these catalogs?</p> <p>A. They are registered by someone authorized to put in a registration form or cue sheet. I put in registrations for my work and I've been authorized in certain circumstances, but not solely as the writer.</p> <p>Q. What does a registration form look like?</p> <p>What is the name of the form?</p> <p>A. BMI clearance form.</p> <p>Q. Have you seen them in the case?</p> <p>A. I think we had some around. I, you know --</p> <p>Q. Just so we are on that subject matter --</p> <p>A. -- I can identify it by sight.</p> <p>Q. -- let me show you now a document.</p> <p>MR. MONAGHAN: I'm going to ask the reporter to mark this as Exhibit 3.</p> <p>(Plaintiff's Exhibit No. 3, a clearance form, marked for identification)</p> <p>THE COURT: Clearance form marked as</p>
<p style="text-align: right;">Page 131</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN MR. MONAGHAN: Your Honor, I don't know -- I tried a fair number of cases, I've never tried one where people jump up and down in the middle of your exam like this. They are free to. But I will say this, this is an exhibit in evidence. My understanding of the evidence rules are the witness can read from any exhibit that is in evidence.</p> <p>My question to her is if she understands why it is this way. That's all I'm asking.</p> <p>THE COURT: Apparently she doesn't.</p> <p>MR. MONAGHAN: That's right, she doesn't.</p> <p>THE COURT: All right, let's go on to something. Let's hold anything that we possibly can for cross, all right?</p> <p>Go ahead.</p> <p>Q. Okay. Are you finished discussing Autobots Go Into Battle?</p> <p>A. Yes. But I know that entered is a date and song number is not shown here. There is a BMI work number. I'm giving this to you. And there's no clearance number, which means I believe comparing it to everything else that it wasn't done through a clearance form.</p>	<p style="text-align: right;">Page 133</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN Plaintiff's Exhibit 3.</p> <p>Any objection to it going into evidence?</p> <p>MR. TANNENBAUM: None, whatsoever.</p> <p>THE COURT: Objections?</p> <p>MS. PHARES: No objections, your Honor, except to note that the date on it is October, '85.</p> <p>THE COURT: In evidence.</p> <p>(Plaintiff's Exhibit No. 3, marked and received in evidence)</p> <p>MR. MONAGHAN: May I approach the witness because I don't have my own copy now?</p> <p>THE COURT: Yes.</p> <p>Q. Miss Bryant, what is this form?</p> <p>A. It is the original Transformers T.V. -- Transformers registration for the T.V. show, apparently.</p> <p>Q. Okay. And what is the title of the work being indicated?</p> <p>A. Transformers T.V. show.</p> <p>Q. No, no, the title.</p> <p>A. Oh, Transformers Main Theme.</p> <p>Q. Is that the theme that you said you composed?</p>

<p style="text-align: right;">Page 134</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2       A. Yes.      3       Q. Is that the one we just heard through your      4       phone?      5       A. Yes.      6       Q. That's the main part of the song?      7       A. Yes.      8       Q. Okay. You used the word, "bridge"; what      9       does that mean "bridge"?      10      A. The middle part.      11      Q. Does the word, "refrain", have any      12       application here?      13      A. "Refrain" is used all over the place.      14      Q. Okay.      15      A. It is used in many ways.      16      Q. And does this show Ford Kinder and yourself      17       as co-writers?      18      A. Yes.      19      Q. And what was Mr. Kinder's contribution to      20       the Transformers Main Theme?      21      A. Well, he didn't write it. He didn't write      22       anything. But he did come up with a line that Joe      23       liked, I think, Robots In Disguise, and that was one      24       line of lyric we were 50/50 partners.      25      Q. Did you ever see this -- did you see this at</p>	<p style="text-align: right;">Page 136</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2       CAROL ANNE BRYANT,      3       the Plaintiff, previously duly sworn      4       by the Court, resumed the stand      5       and testified further as follows:      6       MR. MONAGHAN: If I could ask the court      7       reporter to read the last question, it was your      8       Honor's question to the witness, back.      9       COURT REPORTER: "The Court: But you are      10       not saying there was anything wrong with that      11       form. You and Mr. Kinder, you said, were 50/50      12       splits.      13       "The Witness: We were and -- initially.      14       "The Court: All right.      15       "The Witness: Then it changed when Mr.      16       Dobishinsky started filing things."      17      DIRECT EXAMINATION      18      BY MR. MONAGHAN: (Continued)      19      Q. You were referring to Plaintiff's Exhibit      20       No. 3 in evidence. The Judge was asking you about the      21       form.      22      A. Yes.      23      Q. And then there was a discussion about the      24       50/50 split with Mr. Kinder.      25      A. Yes.</p>
<p style="text-align: right;">Page 135</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2       the time this was generated?      3       A. No.      4       Q. Who was the party submitting this presumably      5       to BMI?      6       A. Lisa Goyette.      7       Q. Who was she?      8       A. She worked for Sunbow.      9       Q. And is this the type of form that is      10       submitted and under what circumstances?      11      A. That's submitted by the publisher, someone      12       who had the authorization to submit it.      13      THE COURT: But you are not saying there was      14       anything wrong with that form. You and      15       Mr. Kinder, you said, were 50/50 splits.      16      THE WITNESS: We were and -- initially.      17      THE COURT: All right.      18      THE WITNESS: Then it changed when Mr.      19       Dobishinsky started filing things.      20      THE COURT: All right, on that note we will      21       take a short break.      22       (Recess: 3:15 p.m.)      23       (Resumed: 3:30 p.m.)      24       (Resumed on the record, in open court -      25       counsel and parties present as previously noted)</p>	<p style="text-align: right;">Page 137</p> <p>1           CAROL ANNE BRYANT - DIRECT/MONAGHAN      2       Q. What does that 50/50 split arrangement with      3       Mr. Kinder have to do with this form?      4       A. Ford Kinder and I split our income, but we      5       didn't split our credits that way.      6       Q. Okay, explain to the Court, so we are clear,      7       what you mean by that when you say you split the      8       income -- you are talking about Kinder-Bryant?      9       A. Yes.      10      Q. What about writer credits as reflected in      11       Exhibit 3?      12      A. Well, that should have never been listed      13       that way. It was initially filed by Sunbow, Kinder &amp;      14       Bryant. And that makes sense that they did it. I      15       don't think they did anything on purpose, but that was      16       the way it was filed. But, of course, it was picked up      17       on lots of cue sheets over time. Like even this title,      18       I don't know who has custody of all of that. And these      19       are instrumental cues.      20      Q. Wait, wait.      21      A. Music.      22      Q. Miss Bryant, we'll go over that. I'm trying      23       to stick with that form.      24      A. Oh, that form.      25      Q. When did you authorize, if you authorized,</p>

<p style="text-align: right;">Page 138</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 someone to put in Kinder for 50 percent on the      3 Transformers Main Theme?      4 A. I didn't. I didn't put in that form.      5 Q. When did you first see this form?      6 A. The last couple of years ago.      7 MS. PHARES: Your Honor, my understanding      8 was that this had been offered as an example of a      9 form. But I now hear Mr. Monaghan asking about or      10 questioning the registration. This is a form in      11 1985 which is well before your Honor's ruling on      12 the statute of limitations. So for Sunbow, in any      13 event, I am objecting that this is irrelevant to      14 the issues before you.</p> <p>15 THE COURT: Also the witness testified that      16 she thinks Sunbow put it in. I'm not giving it      17 any weight.</p> <p>18 MR. TANNENBAUM: I have the same objection.      19 This is a case on re-registration. This is not      20 the original registration.</p> <p>21 MR. MONAGHAN: Well, for the record, your      22 Honor, this is in evidence and it bears the name      23 Sunbow Productions as the party submitting.</p> <p>24 THE COURT: All right.</p> <p>25 MR. MONAGHAN: So I don't think it is just</p>	<p style="text-align: right;">Page 140</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 A. Same composition.      3 Q. The next one is a little different. Prepare      4 For Battle.      5 THE COURT: Okay, thanks.      6 Q. This is -- I guess we've got the middle of      7 it and now --      8 THE COURT: Okay.      9 Q. What is your understanding about the      10 accuracy of the information reflected under Autobots      11 Prepare For Battle in terms of participation, writer      12 participation?      13 MR. TANNENBAUM: Prepare For Battle.      14 MR. MONAGHAN: Prepare For Battle.      15 A. Well, I wrote the music. It is a hundred      16 percent music cue.      17 Q. Are there any lyrics?      18 A. No, there are no lyrics in that background      19 score.      20 Q. So what percentage should that reflect?      21 A. 100 percent.      22 Q. In your name?      23 A. Yes.      24 Q. Do you have any idea how this registered      25 this way?</p>
<p style="text-align: right;">Page 139</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 her opinion. It is in evidence.      3 Q. And you identified this person Lisa?      4 A. Yes. She worked at Sunbow.      5 Q. How do you know that?      6 A. I met her at some point in time.      7 Q. Did Lisa show you this form at some point      8 before it was submitted?      9 A. No. They did the submissions.      10 Q. Now, let's get back to the catalog. Go back      11 to the Transformers. Hopefully, maybe we can get      12 through the catalog on Transformers today.      13 THE COURT: All right.      14 Q. If I can turn to the next song, there is      15 another song -- I say song, another entry, Autobot Go      16 Into Battle.      17 That is the one we just looked at?      18 A. That is the same thing.      19 Q. Okay. Any idea why it is in there twice?      20 Because the work number is different, is it not?      21 A. I don't understand that, no.      22 Q. You don't understand why it is in there      23 twice?      24 A. No.      25 Q. It's talking about the same composition?</p>	<p style="text-align: right;">Page 141</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Do you see?      3 A. If you ask me to guess that I would say that      4 came off that original incorrect registration and then      5 traveled through Marvel and all the other different      6 companies that make these animations. That is my      7 guess.      8 MR. TANNENBAUM: I object. The witness has      9 no knowledge, your Honor.      10 THE COURT: Sustained.      11 MR. TANNENBAUM: I also object on relevance      12 on this, your Honor. If I can have a standing      13 objection to that, I won't stand again.      14 THE COURT: I gave you that once. You still      15 have it.      16 Go ahead.      17 Q. Okay, let's go to Page 6.      18 A. Yes.      19 Q. Referencing the third work which also bears      20 a date entry 10/26/94. Again, do you have any idea of      21 the significance of that date?      22 A. No, I just see it on this form.      23 Q. Okay. Now, the title of the composition      24 here is Battle A; what does that have to do with the      25 Transformers, if anything?</p>

	Page 142		Page 144
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	A. It's a cue.	2	Transformers?
3	Q. And a cue again is music only?	3	THE WITNESS: Oh, yeah.
4	A. Yes. It's a cue.	4	THE COURT: All right.
5	Q. Okay. And the participation shown, writer	5	BY MR. MONAGHAN:
6	participations?	6	Q. Have you ever heard any music which is
7	A. Dannon, Ford, Wildstar, Starwild.	7	identified as Battle A? Is there -- I'm asking a
8	Q. What should it be, in your estimation?	8	question out of the blue here myself. It says, Battle
9	A. It should be Anne and Starwild.	9	A. And the Judge asked a perfectly reasonable
10	Q. What percentage writer royalties?	10	question.
11	A. 100 percent.	11	How do you know that's Transformers? Do you
12	Q. Do you know how this came about that you	12	have any degree of familiarity with the Transformers
13	only got 50 percent?	13	products?
14	A. I think it is key to that very first form	14	A. Well, yeah. I never saw them on T.V. There
15	you showed.	15	was a T.V. show. I don't watch T.V. But because of
16	MS. PHARES: Objection, your Honor. Is the	16	all that has been going on for the last four years I've
17	witness referring to Plaintiff's Exhibit 3 which	17	seen some of the videocassettes. And it's full of the
18	relates to something called Transformers Main	18	Transformers Theme. They play it throughout the entire
19	Theme --	19	show.
20	THE WITNESS: Yes.	20	Q. How about Battle A?
21	MS. PHARES: -- and not to Battle A, which	21	A. They never announced the name of a video of
22	is the entry we're now referring to?	22	a background cue on -- in the middle of a show. Those
23	THE COURT: I think we are talking about	23	are many of the cues that go for the Transformers show.
24	Battle A, are we not?	24	I believe I saw them all over the cue sheets that Miss
25	MR. TANNENBAUM: Yes.	25	Saffer provided for us. Battle AA was on the
	Page 143		Page 145
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	MR. MONAGHAN: The witness's testimony --	2	Transformers show.
3	THE COURT: Oh, I see.	3	MR. MONAGHAN: I'll ask counsel, is there
4	MR. MONAGHAN: The witness's testimony is	4	any dispute that this is referring to the
5	that's how it got -- that's the same music.	5	Transformers?
6	Q. Correct?	6	MR. TANNENBAUM: No.
7	A. Right.	7	MR. MONAGHAN: No dispute.
8	BY THE COURT:	8	MR. TANNENBAUM: Not as to the -- it's -- it
9	THE COURT: How do we know that?	9	appears in the Transformers catalog. Whether it
10	MS. PHARES: Yes. Objection to foundation.	10	is the same song as another listed Transformers
11	THE COURT: How do you know it is the same	11	song, there is much debate about that.
12	music?	12	THE WITNESS: There is.
13	MR. MONAGHAN: Miss Bryant?	13	MS. PHARES: Sunbow joins that objection.
14	THE WITNESS: It wouldn't be in my catalog.	14	But, in addition, the objection that I was lodging
15	These cues wouldn't be continuing in my catalog	15	originally is that I see no reference to Battle A
16	for the Transformers if it wasn't the same melody.	16	as it appears on Page 6 of Plaintiff's Exhibit 2,
17	THE COURT: Is there some way you can tell	17	and Plaintiff's Exhibit 3 which refers to
18	by looking at that by the numbers?	18	something referred to as the Transformers Main
19	THE WITNESS: I can tell by looking at it,	19	Theme.
20	hearing it, I do that.	20	MR. MONAGHAN: Well, this is
21	THE COURT: Could it be that you wrote	21	cross-examination material. The witness has
22	something called Battle A?	22	testified -- excuse me one second. The witness
23	THE WITNESS: I never wrote a song called	23	has testified this is -- it wouldn't be in her
24	Battle A. That is a cue.	24	catalog if it weren't Transformers.
25	THE COURT: So it is your position that's	25	THE COURT: I believe it is for

<p style="text-align: right;">Page 146</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN cross-examination. Let's go.</p> <p>Q. Okay. Then there is another entry for Battle A; is that the same?</p> <p>A. On 8?</p> <p>Q. Page 6.</p> <p>There are three Battle As on?</p> <p>A. Yeah, the same.</p> <p>Q. In fact, there are a slew of Battle As?</p> <p>A. Yes.</p> <p>Q. They all seem to bear, you agree -- and it is in evidence -- they bear different work numbers?</p> <p>A. Yes.</p> <p>Q. Okay. Do you have any explanation for that?</p> <p>A. No, I really don't understand how that catalog --</p> <p>Q. All appear on that October 26th '94 date?</p> <p>A. Yes.</p> <p>Q. Except -- I beg your pardon -- I beg your pardon. There is an entry on Page 7, the second entry has a date of 11/10/94.</p> <p>A. Slightly different.</p> <p>Q. Any significance to that date in your mind?</p> <p>A. Just a couple of weeks later. None for me, personally.</p>	<p style="text-align: right;">Page 148</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN but right now I'll show you another on the Transformers.</p> <p>Are we up to 4?</p> <p>(Plaintiff's Exhibit No. 4, a clearance form, marked for identification)</p> <p>MR. MONAGHAN: We're going to offer this in evidence; is there any objection?</p> <p>MS. PHARES: I object on the statute of limitations grounds. 1988.</p> <p>MR. TANNENBAUM: Same objection.</p> <p>MR. MONAGHAN: That is not an evidentiary objection.</p> <p>MS. PHARES: It is an exclusion.</p> <p>MR. MONAGHAN: It is dealing with the Transformers Theme. And it was produced.</p> <p>THE COURT: I'm going to allow it for whatever purpose I'll use it for. This is again a clearance form.</p> <p>MR. MONAGHAN: Yes, it is, your Honor.</p> <p>(Plaintiff's Exhibit No. 4, marked and received in evidence)</p> <p>Q. Okay, Miss Bryant, you see the document that the reporter has marked as Exhibit 4?</p> <p>A. Yes.</p>
<p style="text-align: right;">Page 147</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>Q. Okay. And what would your testimony be with respect to the compositions reflected on Page 7? In what respect do they relate to the Transformers Theme that you composed?</p> <p>A. All Transformers cues.</p> <p>Q. Okay.</p> <p>A. And they are instrumental and they are music only.</p> <p>Q. And do you have any explanation for the Court why Mr. Kinder is shown as a 50 percent writer?</p> <p>A. No.</p> <p>Q. What did you have to do with that occurring in terms of the registration?</p> <p>A. I didn't file this registration.</p> <p>Q. Okay. Now, if we can go to Page 8.</p> <p>A. You know, these are all on the Transformers cue sheets that Mrs. Saffer gave us, Battle A, Battle B, Battle D. It says Transformers Television Show. Battle A, you know, it is all the theme credited on that cue sheet.</p> <p>MR. MONAGHAN: Let me show you since we are on that subject matter.</p> <p>(Pause in the Proceedings)</p> <p>MR. MONAGHAN: We'll try and locate that,</p>	<p style="text-align: right;">Page 149</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>Q. When did you first see this document?</p> <p>A. Whenever you subpoenaed it from BMI. A couple of years ago, maybe.</p> <p>Q. And do you know what it refers to?</p> <p>A. It's a BMI clearance form, is it not?</p> <p>Q. Transformers Movie Theme.</p> <p>Q. Okay. Had you seen this in or about the time that it is dated, which appears to be 1988?</p> <p>A. No, I never saw it until you subpoenaed it from BMI.</p> <p>Q. And it is in evidence, so you are entitled to read from it.</p> <p>Could you read, please, what the name of the title is that is being registered through this clearance form?</p> <p>A. Transformers Rock &amp; Roll Theme.</p> <p>Q. Are you familiar with the Transformers Rock &amp; Roll Theme?</p> <p>A. Yes.</p> <p>Q. And what music of yours is utilized in that theme?</p> <p>A. It's the payoff of the song. New lyrics. Music was written to build up to the Transformers Theme, which is the famous piece. A verse. Kind of</p>

<p style="text-align: right;">Page 150</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN think of it as a verse and then boom here's the hook. Q. What we just heard on the phone earlier? A. Yes. It paid off with that melody. Q. Now, there is a mention of an outfit called Holy Moly Music on Pico Boulevard. We spent a lot of time on Pico Boulevard recently in Santa Monica, California. Are you familiar with that company? A. No, I don't know that at all. Q. Did you submit this form? A. No. Q. And you have not seen it before this litigation? A. No, I have not. Q. Can you tell the Court, please, what the breakdown of writers -- and identify the writers shown on the form, the names and the percentages attributed to those writers? A. I'll try. Douglas Aldrich, 25 percent. Q. A-L-D-R-I-C-H? A. Yes. Q. Do you know Douglas Aldrich? A. No.</p>	<p style="text-align: right;">Page 152</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN led up to it. I believe there might have been a performance even. So you can argue for what their percentage should be. Should it be a half? Should it be a quarter? I don't know. But I think that was their justification for getting this half. Q. Did you authorize these percentages? A. No. No, I didn't. Q. Did anybody discuss this with you? A. No. Q. Do you know of any relationship between Mr. Bacal and any of these other persons? A. All I know is that Joe produced the movie. Q. Joe Bacal was the producer of the movie? The Transformers movie? A. He's shown on the credits as the producer. Q. Do you know what Holy Moly has to do with Mr. Bacal, if anything? Or Sunbow? A. No, I don't know anything about Holy Moly. Q. And I saw the name, "Lion"; do you see the name "Lion"? A. Lion is a rock group. Q. Are you familiar with that group? A. No. I heard them sing on the Transformers. They are good. And Scotty Brothers is a record label.</p>
<p style="text-align: right;">Page 151</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN Q. The next name? A. Norman Murray Swan. Q. Do you know him? A. No, I don't. 25 percent. Q. Right. A. Joe Bacal, 10 percent. Anne Bryant, 20 percent. Clifford Kinder -- Ford Kinder, 20 percent. Q. Do you see the box checked Motion Picture or T.V. Film up on top? A. Yes. It does -- it says also in somebody's hand "From Film Transformers". Q. Is it your understanding this was submitted to BMI? A. Yes, it was. Q. Okay. And how is it that Douglas -- can you explain to the Court why a person named Douglas Aldrich is given 25 percent of music that you say you composed? A. You know, they did write music that led up to the theme. The theme was the famous piece the Transformers kids grew up on. But they wrote a verse, like a Noel Coward song has a verse that pays off in the famous song, you know. There was verse music that</p>	<p style="text-align: right;">Page 153</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN We never got any royalties, by the way, for records. Q. When did you authorize your theme music to be used as part of the Transformers Rock &amp; Roll Theme? A. I didn't. Q. Okay. A. There's something you missed. Starwild only got 50 percent of the publishing. These people actually got 50 percent of the publishing. Q. "These people" being whom? A. Aldrich and Swan. Q. And do you know how that came about? A. They must have negotiated for it. I don't know how. Q. All right. A. I could never get publishing with them. Q. You could never get publishing from Griffin Bacal; is that what you are saying? A. Right. And Sunbow. They kept the publishing. Q. All right. Now, going back to the catalog, we covered Battle A. Now we are on Page 8. And I think actually there is a carryover. Yes. Page 7. If I can direct your attention to the bottom of Page 7 which refers to Battle B.</p>

	Page 154		Page 156
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	A. Uh-huh.	2	MR. TANNENBAUM: I object. I'm not sure I
3	Q. Again, October 26th, 1994, date shown,	3	know what the question is, I'm sorry.
4	writers shown as yourself and Mr. Kinder, 50/50.	4	MR. MONAGHAN: Her testimony would be it is
5	The testimony would be the same about that	5	incorrect showing Mr. Kinder 50 percent, which she
6	entry as previously?	6	said ad nauseam.
7	A. Yes.	7	MR. TANNENBAUM: Incorrect --
8	Q. You wrote 100 percent of the music?	8	MR. MONAGHAN: My question is: Is it
9	A. Yes.	9	incorrect in showing Mr. Kinder at 50 percent when
10	Q. It is instrumental?	10	it was originally registered, and she said yes.
11	A. Yes.	11	Q. Is that correct?
12	Q. Battle D, the next one.	12	A. That's right.
13	A. Can I just say same?	13	MS. PHARES: And relevance as well, your
14	Q. You can. I believe that is acceptable.	14	Honor.
15	A. Same.	15	MR. TANNENBAUM: We have a standing
16	Q. Same on Battle D.	16	objection?
17	And there are two entries for Battle D?	17	THE COURT: Yes.
18	A. Yes.	18	Q. Well, on Page 14 we are dealing with entries
19	Q. And then Battle E?	19	in 1994, according to the date on BMI records.
20	A. That's the same.	20	MR. TANNENBAUM: No, no, no. Then I
21	Q. All Transformers?	21	strenuously object to anything -- establish
22	A. All Transformers.	22	anything that happened before the change. You put
23	Now we are on to Beat This.	23	in a piece of paper that showed 50/50, then you
24	Q. That is not a Transformers?	24	show 1994 that shows 50/50. I don't know if you
25	A. No. A JEM song.	25	know when something changed.
	Page 155		Page 157
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	Q. Now, if I can direct your attention to Page	2	MR. MONAGHAN: This may be a new way of
3	13?	3	trying a case.
4	A. Thirteen.	4	MR. TANNENBAUM: I'm objecting to you --
5	Q. Do you see that first full entry title	5	THE COURT: Let's continue.
6	C-H-A-E-D?	6	Q. There is an entry on Page 14, Miss Bryant,
7	A. It is misspelled. It should be Chase.	7	Chase D? And a work number, BMI work number ending in
8	Q. What song is that referring to?	8	76; do you see that?
9	A. Transformers.	9	A. Yes.
10	Q. Same deal?	10	Q. What is your testimony about the splits, the
11	A. Yes.	11	writer splits?
12	Q. Chase B?	12	A. The split is incorrect. It is an
13	A. D and B, same thing. C.	13	instrumental cue. Should be 100 percent for music.
14	Q. Again, you have no idea how this came about;	14	Q. Okay. And do you have any knowledge of the
15	is that right?	15	date, significance of the date October 26th, 1994?
16	A. No. I told you --	16	A. No, I don't.
17	MR. TANNENBAUM: Objection to the form.	17	Q. Do you have any knowledge of the
18	A. -- I think it came off the original	18	significance of the work number?
19	registration.	19	A. No, I don't.
20	THE COURT: Sustained. Objection is to	20	Q. Okay. Are you -- up until 2000, did you
21	form, counselor.	21	gain any degree -- let me ask it a different way so
22	MR. MONAGHAN: Okay.	22	they don't jump on me for that.
23	THE COURT: Go ahead.	23	What degree of familiarity did you have with
24	Q. Chase C, Chase D would be the same?	24	respect to BMI's nomenclature; in other words, the
25	A. Yes.	25	names and the designations they used, words like

<p style="text-align: right;">Page 158</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 "clearance forms", "entered", "work numbers", that kind      3 of nomenclature?</p> <p>4 A. I knew about all that except I had a      5 different understanding of cue sheets than what they      6 had been saying here. My understanding --      7 Do you want to know what it is?</p> <p>8 Q. You might as well.</p> <p>9 A. Okay, my understanding of cue sheets, they      10 were used to time and to log music composed for      11 television. None of this music was composed for      12 television, it was composed for another purpose years      13 ago, and then it kept getting lifted from different --      14 became a jingle, it became a Sunbow theme, and then it      15 became a later T.V. Series. They used the same piece      16 of music that was written many years ago. So I didn't      17 understand why that would ever be on a cue sheet to      18 change the percentage of the registration. I can      19 understand that you might want to list the song that is      20 on the cue sheet so that it gets paid, but not list it      21 the different percentages to pay the writers than had      22 been there previously.</p> <p>23 MS. SAFFER: Your Honor, there has not been      24 a single bit of testimony to the effect that any      25 of the percentages were ever changed. In fact,</p>	<p style="text-align: right;">Page 160</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 All right, let's continue.</p> <p>3 BY MR. MONAGHAN:</p> <p>4 Q. Okay, still working on the Transformers.      5 Directing your attention, Miss Bryant, to      6 Page 16. If you know -- and only every question I ask      7 you, Anne, is asking for your personal knowledge.      8 If you know, that second entry there      9 continuing, are you able to identify the music at      10 issue?</p> <p>11 A. It is a Transformers music cue.      12 Instrumental.</p> <p>13 MS. PHARES: Your Honor, one question I do      14 have here is -- and I should have asked this when      15 it was offered -- do we know whose handwriting is      16 on this --      17 (Counsel conferring off the record)</p> <p>18 MR. TANNENBAUM: We are working off a      19 different copy. Go ahead.</p> <p>20 MR. MONAGHAN: Okay.</p> <p>21 Q. Next -- okay, now, we don't have one that      22 mentions Transformers. Page 20.      23 See the third entry there, Miss Bryant?</p> <p>24 A. Fast Action Transformer Theme. Fast Action.      25 Q. Again, bears a different BMI work number</p>
<p style="text-align: right;">Page 159</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 the Plaintiff's own exhibits, which are very old,      3 and we object to on those grounds. But,      4 nevertheless, they have the identical percentages      5 and shares that are listed on the document that      6 the Plaintiff is now testifying to. There is not      7 a wit of evidence that one share changed between      8 the time they were originally registered and it      9 appears on that list.</p> <p>10 MR. MONAGHAN: If I can address this, okay,      11 I don't know if Miss Saffer was listening as      12 closely as perhaps you might have, because the      13 witness's testimony was that she didn't see this      14 form. It was submitted by somebody else. The      15 witness's testimony was that she wasn't able to      16 get her catalog in a timely fashion. And the      17 witness is saying that these entries,      18 notwithstanding that form that might have been      19 submitted by Sunbow Productions, is incorrect.      20 That's her testimony.</p> <p>21 It is fair game for cross-examination. I'm      22 not trying to deprive them, but these repeated      23 interruptions, they are bolloxing up my direct,      24 Judge, I can't get through it.</p> <p>25 THE COURT: I agree.</p>	<p style="text-align: right;">Page 161</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 than previously identified compositions?</p> <p>3 A. Yes.</p> <p>4 Q. Does it bear the date October 26th '94?</p> <p>5 A. Yes.</p> <p>6 Q. What would your testimony be about the      7 writer's splits?</p> <p>8 A. They are -- they are the same as the other      9 cues. They are instrumentals and they are 100 percent      10 music, and they are incorrect.</p> <p>11 Q. Okay.</p> <p>12 MR. MONAGHAN: Your Honor, I have another      13 document that will lead me to the place faster.      14 If I could just have a second?</p> <p>15 Q. I'd like to direct your attention to Page      16 55 --</p> <p>17 A. Fifty-five?</p> <p>18 Q. Yes, ma'am.</p> <p>19 The third entry on Page 55. Three Battle A.      20 What composition are we talking about?</p> <p>21 A. This is all Transformers.</p> <p>22 Q. What would your testimony be about the      23 writer split?</p> <p>24 A. The same as the other named battles. It's      25 an instrumental cue. 100 percent.</p>

<p style="text-align: right;">Page 162</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Q. Now, if I can -- okay, let's go to Page 69.      3 A. I found one that is right. I found one that      4 is right on Page 69.      5 Q. Which one would that be?      6 A. Two in a row. Transformer Bryant cues      7 music.</p> <p>8 THE COURT: Did you say 69?      9 THE WITNESS: Yes, 69.      10 MR. MONAGHAN: Yes, I did, Judge.      11 Q. The third entry there, that's correct?      12 A. And the fourth too.      13 Q. Can you explain why entries that apparently      14 according to the exhibit one made in '97 is correct as      15 well as one made in '94 where these others are      16 incorrect? Do you have any explanation for that?      17 A. You know, I really don't.      18 MS. SAFFER: Excuse me, I'm sorry, but I      19 object because in asking the question an      20 assumption is being made. There has been no      21 explanation as to what the word "entered" means.      22 THE COURT: Well, you'll get your chance --      23 MS. SAFFER: Okay.      24 THE COURT: -- on cross-examination.      25 Go ahead.</p>	<p style="text-align: right;">Page 164</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 100 percent in my name.      3 Q. And then the next one, Transformers      4 Instrumental Theme Two. It says, "a/k/a Transformers      5 closing theme instrumental or with lyrics?"      6 A. Well, it is an instrumental.      7 Q. That's what it says.      8 A. It is a closing theme for the television      9 show and it was actually cleared. There is a clearance      10 number here.      11 Q. Okay. Now, we have not seen -- I don't      12 think we've seen a clearance number.      13 What is your understanding of the      14 significance of the fact that BMI is showing a      15 clearance number in and a song number here, if you      16 know?      17 MR. MONAGHAN: This witness's understanding.      18 MS. SAFFER: Thank you.      19 A. I don't understand what the song number is      20 all about, but the clearance number -- we just saw      21 clearance sheets that, you know, that you fill out and      22 are sent back to you by BMI. So that would be the      23 clearance number.      24 Q. What did Joe Bacal, that shows as      25 24.9 percent interest, have to do with the composition</p>
<p style="text-align: right;">Page 163</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Q. Now, how about the bottom entry there,      3 Transformers Theme B?      4 A. Oh, back to that, it's like the other      5 Chase -- it should be 100 percent for the music      6 instrumental cue.      7 Q. Okay. Page 70, if I can direct your      8 attention, the testimony about the top entry there      9 which I believe is titled on the previous page, it      10 looks like the title is just Transformers entered      11 12/10/97.      12 What is your testimony about the writer      13 splits reflected there?      14 A. It's 50/50.      15 Q. What should it be?      16 A. It should be 100 percent in my name.      17 Q. Again, why is that?      18 A. Because I wrote it.      19 Q. No lyrics involved here?      20 A. There's no lyrics involved in this.      21 Q. Next entry Transformers Bumper?      22 A. A bumper is a musical sting. It closes out      23 a scene. Bum da dum, and then you go to a commercial.      24 And it is used quite a bit.      25 That is a commercial, it should be</p>	<p style="text-align: right;">Page 165</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 of the Transformers closing theme?      3 A. I don't know. He didn't write the music.      4 He didn't write the music.      5 Q. Okay.      6 A. How does anybody write 24.9 percent for a      7 piece of music anyway? That's weird.      8 Q. Did you -- what authorization was given to      9 credit Mr. Bacal with 24.9 percent?      10 A. I never gave any authorization.      11 Q. Okay.      12 A. I'm not in a position to do that.      13 Q. Just please stick with my question.      14 And what is the -- now, we see the word      15 "register" 4/28/97.      16 What is the significance in your mind of      17 that date?      18 A. Seems to be a difference between register      19 and enter.      20 Q. Right.      21 A. Getting it? Okay.      22 Q. Do you know what the date significance is?      23 A. I don't know. No, I don't.      24 Q. Was anything happening of which you are      25 aware at that point in time? Dealing with your music</p>

<p style="text-align: right;">Page 166</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN the Transformers.</p> <p>A. I don't know. I don't watch television.</p> <p>Q. Okay. Now, let's go to the next entry which is Transformers Main Theme.</p> <p>Is that the same theme you've been talking about?</p> <p>A. Yes, that's the original theme.</p> <p>Q. Do you know how it was Kinder was credited with 50 percent of that?</p> <p>A. I don't know how that happened.</p> <p>Q. Okay.</p> <p>A. But it's on that -- that clearance form that you showed us.</p> <p>Q. Next page.</p> <p>A. This is the television theme.</p> <p>Q. This is the television theme?</p> <p>How do you know that?</p> <p>A. Because I don't have new jingles in here.</p> <p>The jingle theme had a nick-name Robots In Disguise which was a major line from the Transformers Robots In Disguise. So Mr. Dobishinsky listed Robots In Disguise for the jingles and the Transformers theme for the song, for the television song. Maybe so that they could tell them apart. I don't know.</p>	<p style="text-align: right;">Page 168</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN him as a lawyer.</p> <p>MR. TANNENBAUM: The witness said "we". I just want to know who --</p> <p>THE COURT: Or anyone else she knows.</p> <p>THE WITNESS: I thought he meant Kinder &amp; Bryant. I believed he was saying you.</p> <p>Q. So he never acted as your attorney?</p> <p>A. No. He once --</p> <p>Q. That's just a yes or no.</p> <p>A. Okay. No.</p> <p>Q. I know it's tempting, okay.</p> <p>THE COURT: Let's go on.</p> <p>MR. MONAGHAN: Thank you, Judge.</p> <p>Q. I believe we are on Page 71.</p> <p>A. Oh, there it is.</p> <p>Q. Transformers Rock &amp; Roll Theme. That's the same name we saw before in the clearance form, wasn't it? The one we could hardly make out?</p> <p>A. Yes.</p> <p>Q. And who are these people? You mentioned Douglas Aldrich. You don't know who he is, although you have an idea. Then you know who Mr. Bacal is.</p> <p>A. Of course.</p> <p>Q. Okay. Is this -- is this an instrumental or</p>
<p style="text-align: right;">Page 167</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>Q. You mentioned him twice now. You mentioned him right at the break when the Judge asked you the question.</p> <p>A. Right.</p> <p>Q. Bill Dob -- D-O-B-I-S?</p> <p>A. -- H-I-N-S-K-I.</p> <p>Q. Who is he?</p> <p>A. He's a lawyer who is an administrator who worked in administration for publishing for maybe a number of people, but I know he worked for Bacal and son, both. They are a publishing arm. Wildstar and Starwild.</p> <p>Q. What was his function as the administrator, as you understood it?</p> <p>A. Well, he filed and cleared compositions with BMI and ASCAP for the Griffin-Bacal and Sunbow writers and for, you know, the publisher. He worked with the publisher.</p> <p>Q. Sunbow?</p> <p>A. Yeah.</p> <p>Q. Or Wildstar or Starwild?</p> <p>A. Right.</p> <p>Q. Did you ever hire him as your lawyer?</p> <p>A. No. No, he was a lawyer, but we never hired</p>	<p style="text-align: right;">Page 169</p> <p>CAROL ANNE BRYANT - DIRECT/MONAGHAN</p> <p>does this have lyrics?</p> <p>A. Oh, it has lyrics.</p> <p>Q. Okay. Do you know what participation Mr. Bacal had in the lyrics for Transformers Rock &amp; Roll?</p> <p>A. He wrote the lyrics for the original Transformers.</p> <p>Q. The Transformers that had lyrics?</p> <p>A. Yeah, the jingle.</p> <p>Q. And the phrase, Robots In Disguise, is that Mr. Bacal's?</p> <p>A. Ford says he wrote it. Said he changed it. I don't know -- I don't remember.</p> <p>Q. All right, again, I think you talked about this, I don't want to beat a dead horse here, but these people are the individuals, some of them anyway, who are listed on that clearance form we showed you earlier. I forgot the exhibit number. Plaintiff's Exhibit 4.</p> <p>Do you know Enson Music Corporation? Does that name have any meaning to you?</p> <p>A. No, I don't know them.</p> <p>Q. And there's a name on the bottom that apparently doesn't participate in any U.S. sharing but it's BMG Dunbar Enson.</p>

	Page 170		Page 172
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	What does that mean to you?	2	the Transformers.
3	A. It's a Canadian company, isn't it?	3	Q. Okay, Page 72, Transformers Theme Open.
4	Q. I'm asking you if you know.	4	Now, am I correct this is an example of
5	A. I think it's Canadian or PROCA. Yeah.	5	where Mr. Bacal is entitled to some participation as a
6	Q. And then the next entry is Theme B,	6	writer; is that right?
7	Transformers Theme B; what is your testimony about the	7	Didn't he write lyrics for this?
8	splits on that?	8	MS. PHARES: Objection, leading.
9	A. It's an instrumental cue.	9	THE COURT: Sustained.
10	Q. And what should the splits be?	10	MR. TANNENBAUM: I liked the question.
11	A. 100 percent should be for me and it should	11	A. What should I do?
12	be Starwild.	12	MR. MONAGHAN: I'll withdraw it. Let me ask
13	Q. And, again, your testimony is -- and correct	13	it straight.
14	me if I'm wrong -- you had an agreement with Kinder	14	Q. What was Mr. Bacal's involvement in this
15	that you would split the income that came into	15	composition as it is listed here; if you know?
16	Kinder-Bryant, but you didn't have an agreement that	16	A. This is the same composition as Transformers
17	you would split these writer shares; is that correct?	17	jingle Robots In Disguise. And the way we worked with
18	A. No, it would get all screwed up if we did it	18	his companies was that we got 100 percent of the
19	that way. And it did anyway.	19	writer's royalties. So it is the same song.
20	Q. Transformers Theme Close.	20	Q. But how -- you got 100 percent?
21	A. Yes.	21	A. No matter what they wrote.
22	Q. How does Joe Bacal get credited with	22	Q. No matter what even Mr. Bacal wrote?
23	24.9 percent?	23	A. That's true.
24	A. I don't know.	24	Q. Why do you say that? You are here under
25	Q. Did you authorize that?	25	oath. Why are you saying under oath that you got --
	Page 171		Page 173
1	CAROL ANNE BRYANT - DIRECT/MONAGHAN	1	CAROL ANNE BRYANT - DIRECT/MONAGHAN
2	A. No.	2	what is your basis for saying you got 100 percent of
3	Q. Did he ever discuss it with you?	3	the writer's royalties even if Mr. Bacal participated
4	A. No.	4	in some way?
5	Q. Did anyone ever discuss it with you?	5	A. Well, that was the deal that we made and
6	A. No.	6	that's the deal I have with every advertising agency I
7	Q. Instrumental?	7	work with. They all give us 100 percent of the
8	A. Usually the closing theme is -- I believe	8	writer's royalties. It is standard practice in the
9	it's the instrumental closing theme. I saw it on the	9	jingle business. The writers keep the royalties
10	cue sheet.	10	100 percent.
11	Q. How about this is a different date now,	11	MR. TANNENBAUM: Objection on the grounds of
12	August 25th, '94. Does that date have any significance	12	relevance. This is not a jingle. This is a song
13	to you?	13	that is used in a television series.
14	A. It's six years.	14	THE COURT: Overruled.
15	Q. Do you know what happened then that might	15	MR. TANNENBAUM: I also object on the
16	give rise to an entry in the records of BMI?	16	grounds of statute of frauds if there is some kind
17	A. No. I don't know what would have created	17	of oral agreement.
18	that all of a sudden.	18	THE COURT: Overruled.
19	Q. Okay. Then we have Transformers Theme Close	19	Go ahead.
20	entered 6/4/98, Joe Bacal 24.9 percent.	20	MS. PHARES: Same objection, your Honor.
21	Same questions.	21	THE COURT: Go ahead.
22	A. I didn't know who did that and why.	22	MS. PHARES: And also we are not referring
23	Q. And what should the split be?	23	to jingles in this case nor to -- nor to
24	A. It should be 100 percent.	24	advertising agencies.
25	MR. MONAGHAN: We're winding down, Judge, on	25	THE COURT: Well, we are referring to

<p style="text-align: right;">Page 174</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 Transformers. Let's go.      3 BY MR. MONAGHAN:      4 Q. The next entry, Miss Bryant, do you know --      5 let me back up to the previous entry.      6 Do you know how the percentages -- is there      7 any basis in your mind for those particular percentages      8 8.3, 8.3 --      9 A. 8.3, 8.3, 83.4.      10 Q. That should add up to 100 percent.      11 Do you know how that was arrived at?      12 A. I can't imagine.      13 Q. Okay.      14 A. It is the same song. And who writes      15 8.3 percent of his song? What is that? A comma?      16 Q. How about the next one?      17 A. Same thing. 8.3, 8.3, 83.4.      18 THE COURT: Well, this may help us as we go      19 along this road.      20 Is there anything, Miss Bryant, that you      21 know about this form, these forms, that can help      22 you decipher about how the split was made? In any      23 of them? Any of them?      24 THE WITNESS: I can't imagine how the split      25 was made.</p>	<p style="text-align: right;">Page 176</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 THE COURT: Okay, go ahead.      3 MR. MONAGHAN: Okay. Your Honor, I've      4 reached the end of my line on Transformers. I've      5 reached the end of the line on my energy. I      6 wonder if you would indulge us by breaking a      7 little bit earlier today.      8 THE COURT: I would like to talk to the      9 attorneys for a minute.      10 MS. PHARES: At this point, your Honor, I      11 would like to make a motion to strike all of this      12 testimony to the extent that it refers to initial      13 registrations, not re-registrations, as was pled      14 in Paragraph 10 of the complaint. And also in      15 your Honor's decisions both in December and in      16 January of last year and this year that all      17 registrations prior to 1994 were time-barred.      18 THE COURT: Yes, well -- let's talk to the      19 attorneys, I'll reserve on that.      20 MR. TANNENBAUM: I just want to join in the      21 objection, your Honor.      22 THE COURT: All right.      23 MR. MONAGHAN: I think we're done.      24 THE COURT: You can step down.      25 THE WITNESS: Okay, thank you.</p>
<p style="text-align: right;">Page 175</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 THE COURT: All right, so let's stop going      3 one to another here, all right?      4 MR. MONAGHAN: I think we might be done.      5 THE COURT: Well, I should have said that      6 sooner then.      7 THE WITNESS: That was the important one,      8 because that's --      9 THE COURT: Okay, but I mean this is going      10 to go on for the other ones that are listed here.      11 MR. MONAGHAN: No, they are not nearly as      12 Transform --      13 THE COURT: No, I mean but to this      14 witness --      15 MR. MONAGHAN: Yes.      16 THE COURT: -- she doesn't know how this was      17 done --      18 MR. MONAGHAN: Right.      19 THE COURT: -- as to any of them that are in      20 this catalog.      21 MR. MONAGHAN: That is true. But she does      22 have to lay a foundation making a claim and      23 100 percent of it is hers and that's the way she's      24 doing it, she is taking each composition because      25 this is the basis for how --</p>	<p style="text-align: right;">Page 177</p> <p>1 CAROL ANNE BRYANT - DIRECT/MONAGHAN      2 (Witness Excused)      3 (Counsel retired to Judge's Chambers of an      4 off the record discussion)      5 (Court Adjourned: 4:20 p.m.)      6 oOo      7      8 C E R T I F I C A T I O N      9      10 I, Elizabeth A. Kent, Senior Court Reporter for      11 the State of New York, do hereby certify the foregoing      12 to be true and accurate, as taken by me on the 6th Day      13 of July, 2004, before the Hon. Andrew P. O'Rourke,      14 J.S.C.      15      16 _____      17 Elizabeth A. Kent      18      19      20      21      22      23      24      25</p>